The legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, if I might inquire of my friend and colleague from Louisiana, I know she is preparing to speak. Might I ask about how long she may speak? I have a speech. I ask unanimous consent, after the Senator from Louisiana finishes speaking, that I be recognized for up to half an hour.

The PRESIDING OFFICER. Is there objection?

Ms. LANDRIEU. I thank the Senator. I will probably speak for about 15 minutes.

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

USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005—CONFERENCE REPORT

CLOTURE MOTION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the conference report to accompany H.R. 3199, the PATRIOT Act, and I send a cloture motion to the desk.

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

The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the Conference Report to accompany H.R. 3199: The U.S. PATRIOT Terrorism Prevention Reauthorization Act of 2005:

Chuck Hagel, Jon Kyl, John McCain, Richard Burr, Conrad Burns, Pat Roberts, John Ensign, James Talent, C.S. Bond, Johnny Isakson, Wayne Allard, Norm Coleman, Kay Bailey Hutchison, Mel Martinez, John Thune, Jim DeMint, Jeff Sessions, Bill Frist, Arlen Specter.

Mr. FRIST. Mr. President, we will be very brief. I know we have two of our colleagues on the floor prepared to speak.

What we have just done is turn to the conference report on the PATRIOT Act, a vitally important piece of legislation, that in bipartisan way our colleagues have addressed, in a bicameral way, and it is now our intention to address the PATRIOT Act, discuss it over the course of, I am sure, later this evening as well as tomorrow.

Because we were unable to come to a unanimous consent agreement to address this bill in a limited amount of time, in an appropriate amount of time, and then to vote up or down on the bill, I filed a cloture motion, and that cloture vote will actually be Friday morning. I will have more to say about that.

Let me briefly turn to my distinguished colleague, who is chairman of the Judiciary Committee, who has put together, again in a bipartisan way with a lot of negotiation and compromise over the long period of time, a bill that, as we all know, has passed the House of Representatives earlier today with I believe 44 Democrats voting for the PATRIOT Act in the House of Representatives, a bill that we now will be addressing on the floor of the Senate.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I shall be brief. I know two Senators are waiting to speak.

I congratulate the House of Representatives for approving the conference report by a significant margin.

I thank the majority leader for moving ahead procedurally with filing of the cloture motion. There have been a number of public statements made by Senators about an intention to filibuster. We are obviously at the conclusion of our work and we want to proceed. I am advised by the distinguished majority leader that this conference report will be on the floor tomorrow.

I urge my colleagues to come to the Senate to debate the issue. It is a complicated bill. I addressed it at some length the day before yesterday with a floor statement, moving into the critical areas. Yesterday, Senator FEINGOLD and I had an opportunity to discuss the bill for almost an hour. It is valuable for our colleagues to know the details as to what is in the bill. That can be best accomplished by an interchange of ideas, those who have objections stating them, and hearing the responses so that we may fulfill our responsibility as the world's greatest deliberative body. I look forward to that exchange and debate.

I believe it is an acceptable bill, a good bill, not a perfect bill. I am prepared to go into detail. I have talked to many of my colleagues one on one, individually, and I have found, understandably, because of the complexity of the bill, that many of its provisions are not fully understood as to what they mean and what the import is and why we have come to this.

Ideally, I would like to have seen the Senate bill go through unanimously, passed by the Judiciary Committee 18 to 0, and then on the unanimous consent calendar here, which is, I think, unprecedented for a bill of this magnitude. But we have a bicameral system, and we conferred at length with our colleagues in the House of Representatives and are presenting the conference bill, which I submit is a good bill that I am prepared to advocate tomorrow.

I urge those who want to speak to come to the Senate tomorrow morning when we take up the bill and have a constructive debate so our colleagues may be informed about the contents and vote on the cloture motion in a timely way and hopefully move forward to consideration on an up-and-down vote.

I thank my colleagues from Louisiana and Iowa for yielding this time.

Mr. FRIST. Mr. President, let me very briefly close in stating my strong support for the legislation, the substance of the legislation, but also underscore the importance of this Senate acting on this legislation. I encourage our colleagues who have talked about filibuster to do exactly what our distinguished chairman has talked about, and that is look at the substance of the bill. A lot of changes and modifications have been a product of compromise and negotiation and have been put into the bill. It is very strong in terms of issues such as terrorist financing and protection of our ports and addressing issues surrounding mass transit and privacy and personal liberties.

This bill does present us with a stark and clear choice: Should we take a step forward, which we have an opportunity to do in the next several days, or take a step backwards in that goal to make America safer? It does expire on December 31. The PATRIOT Act expires on December 31, but the terrorist threat does not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, I begin as my leader is in the Senate to say the bill they most certainly have presented for our consideration is one that needs attention and needs deliberation. The PATRIOT Act is a very important part of the security of our Nation. We can debate the inside and pieces of it, but I strongly suggest to the leadership that protecting America is more than just the chapters and statutes related to the PATRIOT Act.

Protecting America is about protecting patriots in the gulf coast, in Louisiana, in Mississippi—not just citizens who are patriots, taxpayer citizens, hard-working citizens who have come to believe the notion that in America they are safe, or should be safe, and if disaster does strike, the government, with the private sector and with their own effort, will be there to help.

What about the patriots on the gulf coast who are veterans themselves, the 400,000 veterans in Louisiana, the 250,000-plus veterans in Mississippi—just for two States that were affected—men and women who have put on the uniform, served their time, true patriots. What are we doing to secure their homes, their schools, their churches?

I suggest to the leadership that while the PATRIOT Act itself has many pieces of what helps make America secure, it is one piece but not the only piece. We should most certainly not be comfortable leaving here without securing the homes and businesses and dreams of average Americans, patriots, on the gulf coast.

As I speak for just a few minutes this afternoon, it has been over 100 days

since two of the deadliest storms hit the coast of America: Katrina and Rita, Katrina on the southeastern part of Louisiana, on the Mississippi section as well, and Rita, just a little over a week later hitting the southwest part of Louisiana and Texas counties as well.

As the days and weeks have unfolded and as there have been investigations and hearings and committees that have looked into what happened, I suggest it was not just a natural disaster that led us to this point but a manmade disaster.

The Times-Picayune, the major newspaper in New Orleans, and other papers in the region, have written extensively on this subject. I ask unanimous consent that this article, ''Evidence Points to a Man-Made Disaster,'' be printed in the RECORD.

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

[From the Times-Picayune, Dec. 8, 2005]

EVIDENCE POINTS TO MAN-MADE DISASTER

(By John McQuaid, Bob Marshall and Mark Schleifstein)

As investigators and residents have picked through the battered New Orleans levee system's breaches, churned-up soil and bent sheet pile in the 100 days since Hurricane Katrina struck, they have uncovered mounting evidence that human error played a major role in the flood that devastated the city.

Floodwall breaches linked to design flaws inundated parts of the city that otherwise would have stayed dry, turning neighborhoods into death traps and causing massive damage. In other areas, poorly engineered gaps and erosion of weak construction materials accelerated and deepened flooding already under way, hampering rescue efforts in the wake of the storm.

These problems turned an already deadly disaster into a wider man-made catastrophe and have made rebuilding and resettlement into far tougher and more expensive challenges.

That's the picture that emerges from investigations of the levee system by teams sponsored by the state government, the American Society of Civil Engineers and the National Science Foundation, as well as from dozens of interviews with local residents, officials and engineers.

Experts say the New Orleans flood of 2005 should join the space shuttle explosions and the sinking of the Titanic on history's list of ill-fated disasters attributable to human mistakes.

The evidence points to critical failures in design and construction, as well as a lack of project oversight and responsibility that allowed small problems to metastasize into fatal errors. Twisted lines of authority led to cursory inspections, communications snafus and even confusion about such basic information as wall dimensions.

Outside engineers, political leaders and many New Orleans residents now question the judgments and even the once-unassailable competency of the Army Corps of Engineers, which had final authority over the system. The corps and some of the same firms involved in the original design and construction of the levees are spearheading the effort to repair the system and already are planning to build stronger protections.

Sen. David Vitter, R-La., who sits on two Senate committees investigating the levee failures, says the U.S. system for building flood defenses is broken. The corps, he said, should be overseen by outsiders who can ensure it will do the job right.

''We need a new model, a new structure, a new process to get this done which has to include outside, independent review of the corps by outside, independent engineering experts,'' he said.

''THE BEST MINDS''

The levee flaws also raise troubling questions about the integrity of flood defenses elsewhere.

''Everybody who has a levee out the back door now has to look out and wonder, is this going to fail? Was it designed right?'' said Steve Ellis, vice president of Taxpayers for Common Sense, a Washington fiscal watchdog group critical of the corps' priorities.

Corps spokesman David Hewitt said the agency has several experts and engineers from outside agencies, private firms and academia to aid its investigation. ''We are determined to find out exactly what happened both in the technical engineering and the planning and execution process so that we can prevent another occurrence,'' Hewitt said. ''We are engaging the best minds and professional expertise in this important effort.''

Engineers say most structures that fail do so not because they're hit by overwhelming forces, but because of flaws that creep in unnoticed during design, construction and upkeep. A paper published this month by Robert Bea, an engineering professor at the University of California at Berkeley who is studying the levee failures, concluded that 80 percent of 600 structural engineering failures he studied in the past 17 years were caused by ''human, organizational and knowledge uncertainties.''

Bea said everything he has seen about the New Orleans levee system so far tells him it belongs in that category.

NOT AS GOOD AS ADVERTISED

The levee system's design dates to the 1950s, when understanding of hurricane risks and flood dynamics was primitive compared to today. The system was never built to take a hit from the most powerful hurricanes, storms in Categories 4 or 5 on the Saffir-Simpson scale. The levees were designed by congressional mandate to fend off floodwater heights—up to about 11 or 13 feet, depending on location—that Category 1 or 2, and some Category 3 storms would kick up.

But the investigations show that the levees did not live up even to that billing. When Katrina's storm surge rolled in from the Gulf of Mexico before dawn Aug. 29, the huge dome of water followed a path up the Mississippi River and then along the Mississippi River-Gulf Outlet into Lake Borgne.

In a matter of hours, the sheet of water—reaching 25 feet high at some locations—moved relentlessly north and west, pouring over the tops of and eroding large stretches of levees surrounding Chalmette, clearly exceeding their design capacity.

When the surge reached New Orleans' southern edge along the Gulf Intracoastal Waterway, it caused as much as five miles of the 17.5-foot tall levee there to disappear, creating a back door for water into eastern New Orleans.

Water pushed west through the waterway into the Industrial Canal, where it met water already rising from storm surge that had entered Lake Pontchartrain. The water topped levees on both sides of the canal, causing walls to fail on the east side, flooding the Lower 9th Ward, and leaking through smaller levee breaks and a pump station on the west side, flooding the rest of the 9th Ward.

BREACHES BY DESIGN

Later that morning, as surge rose in Lake Pontchartrain, floodwalls along the 17th Street and London Avenue canals breached, even though the water was well below their tops. Investigators say those breaches shouldn't have happened. Observational data and computer modeling indicate that storm surge entering the canals from the lake reached heights ranging from 9 to 11 feet in the 17th Street Canal and 11 to 12 feet in the London Avenue Canal. The walls were 13.5 feet high or higher along much of the two canals and were designed to withstand water rising to 11.5 feet.

Investigators say the walls broke when floodwater, pushing through the soft, porous earth under the steel sheet pile foundations, started moving the soil. In the 17th Street Canal, one breach opened on the east side, and in the London Avenue, two breaches occurred. Water poured into the Lakefront area and moved south, inundating much of central New Orleans over the course of the day and night.

Engineers say some systemic design problem—not merely a localized fluke—caused the breaches because walls gave way in two canals and some walls appear to have been close to breaching at other points.

While it's easy to second-guess after a disaster, outside engineers say the depth of the sheet pile foundation appears too shallow. A survey by Team Louisiana, the state-sponsored forensics group, found—and the corps confirmed last week—that the sheet pile depth was about 10 feet below sea level in the breached areas at both canals, much shallower than the 18.5 foot below-sea-level depth of the canals and 7 feet shorter than the corps thought.

Modjeski & Masters, the firm that designed the 17th Street canal wall, said last week it had initially recommended a 35-foot depth for the piling on the 17th Street Canal, then shortened it at the corps' behest, but the firm offered no documentation to back the claim.

SOIL AND SAFETY

It's still unclear exactly what went wrong, though engineers suggest the soil's resiliency was overestimated.

New Orleans soil is swampy and mushy, with alternating layers of peat, clay and sand. Along the length of a floodwall it varies wildly in consistency and strength. Along both canals, a layer of peat—the weakest and spongiest of soils—lies directly under breaches a few feet below the base of the sheet pile. Along the London Avenue Canal, coarse sand underlay the peat and now lies throughout nearby residential yards and homes, another layer of weakness, the engineers said.

''Those are the kinds of subsurface conditions that lend themselves to having weak pockets or stronger pockets, and Mother Nature will always find the weak pockets,'' said Joseph Wartman, a Drexel University geotechnical engineer studying the levee failures. ''What makes levee design and engineering so challenging is you can have a system that's many, many miles long and you only need the weakest 150 feet to rupture for the whole system to fail.''

Another factor in the breaches, one with national implications, is the low safety factor used in constructing the levee banks and floodwalls. A safety factor is a kind of cushion that engineers include in a structure's design to ensure it can withstand all the punishment it's designed to take, plus a little more.

Corps standards for levees and floodwalls date back decades, officials say, and were intended to protect sparsely populated areas, not cities and billions of dollars of infrastructure. The safety factor of 1.3 used in the designs is significantly lower than those used in structures with similarly large-scale tasks of protecting lives and property.

With data from soil borings spaced at more than 300-foot intervals along the canals, engineers could develop only a fragmentary picture of what is underground. They were supposed to account for that uncertainty. That is typically done by raising the safety factor or by making conservative estimates of soil conditions.

Team Louisiana investigators said last week that based on new calculations, they think engineers working for contractors Eustis Engineering and Modjeski & Masters miscalculated the depths of the 17th Street Canal walls. The team has not yet released detailed findings. University of California engineers say the designers might not have accounted for storm surge's effects on the soil.

According to project and court documents, those designs were reviewed and approved by corps engineers.

It's not clear yet whether additional factors such as cost-cutting or specific on-site construction problems contributed to the levee breaches, but the failures can also be linked to a chain of political and managerial decisions.

The corps originally proposed building floodgates at the mouth of each canal—and at the mouth of the Orleans Canal that runs along the west side of City Park—to block surge. But local officials, including those at the Orleans Levee Board and New Orleans Sewerage & Water Board, insisted on building floodwalls because floodgates would have made it difficult to pump water out during a storm. Engineers say the obvious, though expensive, solution is to build pumping stations at the lakefront rather than miles inland.

A 1980s-era Sewerage & Water Board dredging project in the 17th Street Canal next to the breached area left the Orleans Parish canal-side levee wall much narrower than that on the Jefferson Parish side. Investigators say that change probably contributed to the failure of the wall.

Pittman Construction, the contractor that built the 17th Street Canal wall, ran into trouble driving sheet piles in 1993. When the concrete tops to the walls were poured, documents show, the walls tipped slightly. Though the corps attributed this to Pittman's methods, not the site conditions, and a judge agreed, some engineers say the difficulty they encountered was an early warning sign.

WHAT LIES BENEATH

Meanwhile, state and local officials have admitted they generally skipped the canal floodwalls in annual inspections of levees—and the levees they did inspect were examined in a cursory fashion.

Though necessary, visual inspections are of limited use. Absent an obvious problem like water bubbling to the surface, most levee problems go on out of sight, meaning a system's problems can go undetected for years without a more aggressive inspection program that includes probing beneath the surface with soil sampling, sonar or other methods.

''It looks perfect from the outside. It looks in good shape. Even if you had a 10-man crew walking along there every day, you would not have seen the problem,'' said Jurjen Battjes, a retired professor of engineering from the Technical University of Delft, Netherlands, who is on an American Society of Civil Engineers panel reviewing the corps' investigation.

To the east, assessing the levee system's performance is a more complicated task. Water flowed over levees and floodwalls along the Industrial Canal, Gulf Intracoastal Waterway and Mississippi River-Gulf Outlet. In many spots, the water scoured out earth along the dry side and the walls gave way.

In general, engineers say that once a levee is topped, its structural integrity cannot be guaranteed. But the speed with which many of the walls breached or eroded and the large scope of the damage have alarmed investigators. The outer levee along the Mississippi River-Gulf Outlet protecting St. Bernard Parish and the levee along the north side of the Gulf Intracoastal Waterway protecting part of the Lower 9th Ward were all but washed away by the storm, for example.

Engineers say that if a wall is sturdy enough to remain in place while water flows over it, flooding will be minimized, lasting only until the surge drops. When a breach opens, adjacent neighborhoods basically become part of nearby waterways and the scale of the flooding is many times greater.

THE FUNNEL EFFECT

One source of the scouring and multiple breaches is actually a corps policy, dictated by Congress. Corps officials say they are not allowed to put rip-rap, concrete or other forms of scour protection on the dry side of levees. Doing that anticipates flood level higher than the walls are designed for, which is beyond the corps' mandate for Category 3 protection.

A report published last month by the American Society of Civil Engineers and National Science Foundation teams identified other unanticipated weaknesses in the levee system. Builders used weak, sandy soils in the now-obliterated St. Bernard Parish hurricane levee, and that likely contributed to its rapid destruction. In areas where two different levee sections came together, investigators found many awkwardly engineered transitions that allowed water through.

A much larger problem lies in the overall design of the levees along the city's southeastern flank. Unlike areas fronting Lake Pontchartrain, southeastern areas are more or less directly exposed to waters from the Gulf, and hurricane floods are more likely to strike there and rise higher when they do.

The levee system forms a V-shape where the MR–GO and Intracoastal Waterway meet. That acts as a giant funnel, driving water heights even higher and channeling storm surge directly into canals leading into the city.

Computer modelers have complained for years that the corps had underestimated the risk to those areas, and former corps modeler Lee Butler estimated the actual risk was double the corps estimate in a 2002 study done for The Times-Picayune. The corps only recently announced it will stop dredging the MR–GO.

WAITING FOR ANSWERS

It will take months, and possibly years, to arrive at a detailed assessment of what went wrong and assess responsibility, engineers familiar with the situation say. Investigators must determine not only why individual wall sections failed, but they also must trace the roots of decisions, untangling overlapping responsibilities of the corps, private contractors and local agencies. A federal interagency team investigating the system won't make its report until June. A National Research Council team is only now being formed.

So far, the scope of the disaster, and the human element central to it, have only begun to sink in among political leaders and agency heads, including the corps, which is at the center of all the inquiries. The corps has declined to comment on the causes of the levee failures, pending the outcome of its own studies.

People familiar with the agency say the disaster means things might never be the same.

''In the old days the corps used to get criticized for being way too conservative in their designs,'' said Don Sweeney, a corps economist for 22 years who left after exposing irregularities in the agency's economic impact statements and now teaches at the University of Missouri. ''They would design a structure with a safety factor of 4 or 5. They did have that reputation of building things with integrity that were built to last. And if they said it was built to do something, it would do it.''

Ms. LANDRIEU. I also ask unanimous consent to have printed in the RECORD ''Corps' Own Study Backs Critics of Levee Engineering.''

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

CORPS' OWN STUDY BACKS CRITICS OF LEVEE ENGINEERING

[From the Times-Pacayune, Dec. 10, 2005]

(By Mark Schleifstein)

An internal review by the Army Corps of Engineers supports most of the criticisms leveled against the New Orleans area levee system by an independent team of engineers, including questions about soil strength, levee maintenance and whether the system was built as designed.

In a Dec. 5 interim report released Friday, the Interagency Performance Evaluation Task Force said its conclusions already have been passed on to engineers who are working to restore the levee system to its authorized protection level before it was overwhelmed by Hurricane Katrina, flooding more than 70 percent of the city.

''The IPET team vigorously agrees that everything possible should be done to reconstitute an effective and resilient flood protection system for the New Orleans area,'' the report said.

While the level of protection is still limited by past congressional authorizations to the equivalent of a fast-moving Category 3 hurricane, the report said the task force will evaluate the risk and reliability of that system.

''This will provide a clearer perspective of the overall performance capacity of the system for use by individuals and governments in their decision making,'' the report said.

The task force concurred with the independent engineers from the American Society of Civil Engineers and the National Science Foundation that the failure of levee walls at the 17th Street and London Avenue canals were likely caused by failures in the foundation soils beneath them. The engineers also have noted that sheet piling beneath the walls was too short to properly support the walls.

The independent engineers said soft peaty soils under the 17th Street levee and a combination of soft peat and sand beneath the London Avenue levees allowed water from the canals to push the walls and earth beneath them out of the breach areas, allowing water to flood into much of the city.

''Extensive observations by a number of teams found no signs of major overtopping of these systems at the breach sites,'' the report said, pointing to a structural failure of the floodwalls at those sites.

ANALYZING FAILURES

The corps task force is studying a variety of other factors that also may be involved in the failures at those two canals:

The potential for differences between how the levee and floodwall structures were built and the plans and specifications that were supposed have guided their construction.

Properties of soil layers beneath the levees to a depth of 60 feet below sea level.

The kinds of soil materials, including whether they were natural deposits or were

compacted properly to remove moisture and be more dense.

Whether the soil layers included tree stumps or other organic materials.

The way the soil may have coped with the forces imposed by Katrina's wind and water.

The effect of trees, swimming pools and other objects in nearby back yards that may have affected the levee strength.

How close the levee failures were to bridges, and whether the connection between them was adequate.

Whether operations and maintenance practices by the corps and individual levee boards differed from the corps' Operations and Maintenance Manual.

The task force said it had found evidence that scour, probably from water going over the top of the levee, occurred along the London Avenue Canal at the southeast corner of its intersection with the Robert E. Lee bridge, near a part of the wall that looks deformed. That levee section is directly across from a breach.

Damage near a pump station at the southern end of the Orleans Canal also appears to indicate water topped the levee wall there, the report said.

Along the levee walls of the Industrial Canal and along earthen levees on the Gulf Intracoastal Waterway and Mississippi River-Gulf Outlet, Katrina's storm surge went over the top, causing scouring or in some cases simply washing away large parts of the levees, the report said.

At the Industrial Canal, the water pouring over the wall scoured the levee on what was supposed to be the protected side of the I-shaped levee wall.

''The erosion appeared to be so severe that the sheet piles may have lost all of their foundation support, resulting in failure,'' the corps report said.

PROTECTING BACK OF LEVEES

The task force also agreed with the independent engineers that those designing repairs to the levee systems should consider ways of protecting the back sides of levees from the effects of water scour in the event another major hurricane's storm surge tops the levees.

Officials with the corps' Task Force Guardian, which is in charge of the rebuilding effort, already have said they plan to use more protective inverted-T levee walls in the 17th Street and London Avenue canals where breaches occurred. Water topping such a wall would splash down on a concrete strip before running off.

The investigative task force also said the use of erosion protection, including riprap, concrete mats or slabs, or paving, should be considered in areas where erosion by waves and surge are possible. The report said additional study is under way into where structures in the levee system are most likely to sustain unusually large surge and wave conditions.

And the report recommended using stronger clay soils in building levees ''to improve their survivability chances.''

The investigative task force also recommended that in rebuilding, more effort should be put into assuring that connections between different types of protective systems—such as walls and earthen levees—be better designed.

''A common problem observed throughout the flood protection system was the scour and washout found at the transition between structural features and earthen levees,'' the report said. Similar problems occurred where ''penetrations,'' such as streets or railroad tracks, went through levee structures, the report said.

The task force also agreed with the independent engineers' conclusion that a lack of access to the land side of levees and levee walls, such as found along the canals in New Orleans, led to major problems for emergency personnel attempting to make repairs.

In the aftermath of Katrina, corps contractors had to build a road behind homes along Bellaire Drive to reach the 17th Street canal breach.

Corps officials told the Orleans Levee Board this week that they expect to expand the canal levee walls' rights of way by 15 feet to build an access road.

LOOKING FOR WEAKNESS

The task force also recommended that corps officials undertake an in-depth investigation of the area's levees to determine where other weaknesses might lie.

''Detailed inspection of the entire hurricane protection system using appropriate remote sensing, surveying, inspection and investigation techniques and equipment implemented and analyzed by properly trained and experienced professionals is recommended to identify those structures that have been weakened but have little visual evidence of degradation,'' the report said.

The corps task force held off on agreeing with a recommendation from the independent engineers to keep sheet piles in place along bridges on the northern end of the 17th Street and London Avenue canals so they could be easily plugged in advance of a storm during the next hurricane season.

That decision will require further study, the report said.

The report said it was outside the task force's authority to concur with the independent engineers' recommendation that the corps should retain an independent board of consultants to review the adequacy of interim and permanent repairs.

The report points out that Katrina's sustained winds were at 147 mph when it crossed the Louisiana coast early Aug. 29.

''The sustained wind speeds for the standard project hurricanes used to design many of the flood protection structures in and around New Orleans were in the neighborhood of 100 miles per hour,'' the report said. ''While wind speed alone is not a complete measure of the surge and wave environments experienced by specific structures, it is a clear indicator of the level of the forces to which the system was subjected.''

According to National Weather Service records, the highest winds recorded in the immediate New Orleans area were gusts of 105 mph at Lakefront Airport and Belle Chasse Naval Air Station. But much higher wind speeds were believed to have occurred in eastern New Orleans and St. Bernard and Plaquemines parishes, which were directly in the path of Katrina's eye.

The report said the task force is conducting an analysis of Katrina's surge and wave effects in Lake Borgne and the rest of the New Orleans area so the data can be used in determining the forces acting on levees and floodwalls throughout the area.

Ms. LANDRIEU. The point is, this was not just a natural disaster, it was a manmade disaster. One of our columnists captured it correctly. You could almost argue, based on the evidence that is in, independent evidence, that it was a Federal Government-sponsored disaster.

Let me repeat, these are strong words: A Federal Government-sponsored disaster because it was the Corps of Engineers, the failing of a sophisticated and supposedly a strong levee system that failed, that put a major American city underwater 10 to 15 feet for 2 weeks and flooded a region, with multiple levee breaks in an urban area.

It has never happened in the recent hitory of America. It has not happened since the great floods of 1927 when the Mississippi system was designed. It is written and documented beautifully in John Barry's book, ''Rising Tide.''

We have a natural disaster of unprecedented proportion coupled by a manmade disaster of neglect, poor design, faulty design, and no telling what else will be discovered. This is the result. These are homes that resulted. A hurricane did not do this. Katrina did not do this. Rita did not do this. We did this. The Federal Government sponsored this disaster by not securing and supporting the levee system, by not engineering it properly, and this home that is in Chalmette, which is in St. Bernard Parish which lost almost every home in the parish. This is why I say we shouldn't go home because people in St. Bernard, in St. Tammany, in Orleans, in Vermilion, in Cameron, in Calcasieu, in counties along the Mississippi gulf coast from towns such as Biloxi and Waveland, this is what their homes look like.

Let me show another picture. The sun is shining, but it is not a happy time for the family that lived in this home. This could have been done from a hurricane, from wind damage. There may or may not have been flooding in this home. I am not sure if this was on the gulf coast, but I can promise, hundreds of thousands of homes along the gulf coast looked like this.

What our delegation has said with the rising voices of the Mississippi delegation, as well as the Louisiana delegation, without action, homes are going to stay looking like this for months, if not years.

I do not know how to express any more clearly that what we have done to date is wholly insufficient. FEMA, on its best day, being led by the finest executive you could find in the country, is not designed to meet the challenges of this kind of disaster. Let me repeat, on its best day, with the finest executive we could find, it is not designed to meet this disaster. So when people continue to say, and legislators and Congressmen, ''Well, we have sent $62 billion to FEMA. We have done enough,'' I, please, want to plead with my colleagues and the citizens of our Nation, do not confuse sending money to FEMA with giving help to homeowners, businesses, large and small, in Mississippi and Louisiana. Please do not confuse that. They are two separate things. You can send money to FEMA and then maybe cross your fingers to see if any of that money gets to solve this problem.

This is a picture I have used a lot because it reminds me of my own grandmother who had a camp a lot like this. There is virtually nothing left of the camp we owned. But this is typical of senior citizens throughout the gulf coast. This would be what most of our grandparents and parents are going to do this holiday. This picture—it really is one of the most heart wrenching,

moving pictures, and I have seen thousands of them.

What does this woman do? FEMA is not enough to help. That is why I have said we are going to slow this process down. I know people are anxious to get home for the holidays. I know this is not the only issue before America. But it goes to the heart of what homeland security is about—or should be about. If you cannot be secure in your own hometown, if you cannot be secure in your own home, if you cannot be secure when you are kneeling in your own church or when you are in your own business, where can you be secure? I am not suggesting we are powerful enough to stop hurricanes, but I am suggesting we should be smart enough and powerful enough to mitigate against their damage, to prevent manmade disasters by underinvestment in civil works systems that are important for the growth of the country, and men and women enough when the disaster does happen to step up and think outside the box and do something that actually helps people. So I am not anxious to go home because the people I represent do not have any homes to go home to.

Now, this next picture is not as dramatic a picture, but it will tell you the story. In the South, we have been talking about Hurricane Andrew since it hit. I think it was in 1992. Yes, here it is, 1992. Hurricane Andrew in the South is like a legend. People talk about Camille, they talk about Betsy, but then everybody says: Andrew. It hit Florida. It did not hit us, but a lot of our people went over to Florida to help. We remembered Andrew. We saw pictures of Andrew for months, and we did everything we could to try to help in Florida. And it was the worst, costliest storm ever to hit.

Can I show you what Katrina is? This is not even counting Rita. For Katrina, insured losses are twice—twice—that of Hurricane Andrew. And this is not even showing the costs for Rita. It could be triple the costliest storm in the history of the United States. It is not because the hurricanes were really maybe as bad. And maybe they were equal. But this differential is about a levee break in an urban area, putting 200,000 homes underwater and uninhabitable, and 18,000 businesses.

I believe, if I am not wrong about Hurricane Andrew, we lost 28,000 homes. That is a lot of homes. Think about a town with 30,000 people. That is a pretty big-sized town. Think about every home in the town being destroyed. That is a very terrible tragedy. We had 205,000 homes totally destroyed, uninhabitable, from Katrina. These are not homes with blue tarps on the roof until the roofer can come in, with people in the kitchen; these are homes that you cannot stay in for more than 5 minutes or maybe an hour or two to clean up. There is no water. There is no electricity. There is mold. There is mildew. People are gutting their homes, basically sitting on slabs. That is 205,000 homes totally destroyed. Mississippi had 68,000 homes totally destroyed, we had 205,000 homes totally destroyed, for a total of almost 300,000 homes—poof—gone, destroyed. That is not damaged. That is not thousands of homes that have a tree through the roof or the porch fell off or there was water in the kitchen and the appliances do not work but you can sleep in the bedroom and just kind of wait for the kitchen to get back. These are 300,000 homes gone.

Many of them did not have insurance because they were not required to because our laws were not written correctly to require them to. They were sitting in high places, in places that had never flooded before. And they looked up, and because our levee system failed, they have lost their house, they have lost their business, they have lost their financial future. Their children are not going to college. Their kids are not in the school. They are not worshiping in their church. And we are sitting around here passing 100 bills that have nothing to do with helping them.

Yes, this chart is what I was looking for. Sometimes I cannot keep numbers in my head and sometimes I can. There were 28,000 homes lost from Andrew. Charley, Frances, Ivan, and Jeanne—we still talk about those hurricanes. They were terrible hurricanes and 27,000 homes destroyed. Look at Katrina—275,000 homes destroyed.

Now, this graph is why we are struggling to a point where I just cannot quite describe that if we do not get some real help real soon, this region is not going to be able to stand back up. Now, we will eventually—I will get to that point in a minute—but it is going to be very difficult. We lost 18,752 businesses in Louisiana alone. Mississippi lost close to 2,000. Let me repeat: 18,000 in Louisiana, 2,000 in Mississippi.

Now, I am not saying this to minimize what happened to the gulf coast. As I have shared with Senators with whom I serve, I grew up on the gulf coast. I love Pass Christian probably as much as they do, but they had 2,000 businesses destroyed. But when levees break in a major city, this is what happens. This is virtually every small business or a large part of the small businesses in the metropolitan area.

Now, we stand up here in this Senate all the time and say: Small business is the backbone of our economy. Please, let's help small business. Could somebody tell me how FEMA is actually going to stand up these 18,752 businesses that pay taxes, that were patriots, that played by the rules, paid their employees? These are not big corporations. We only have one Fortune 500 company. But we have a lot of good people who worked hard to build those businesses, and—poof—they are gone. Some of them had insurance, but some of them did not.

So we put in a bill 7 weeks ago. OLYMPIA SNOWE and JOHN KERRY passed a bill almost unanimously in the Senate. It is sitting somewhere because we just cannot get out of the box enough to help these people. We have to go through the same old regular process that is not working. And last time I checked, under the administration's proposal, we had processed a grand total of six—six—six—GO Loans in Louisiana. I have 18,000 businesses gone, and we processed 6 GO Loans last week.

When I suggest we have been about as patient as we can be, that is why we may be staying here through Christmas.

The system is not working. Business owners are losing everything they worked for, not in one lifetime, three lifetimes—grandfather, father, son, or grandmother, daughter, granddaughter, 60, 70 years, businesses gone. And this Congress can't figure out how to help these businesses. But we are building infrastructure in Iraq. We are building businesses in Iraq, but we can't help our own American businesses.

Political allies of the White House have said that more has been accomplished than any other American disaster including 9/11. The claim cannot be justified. That claim is inaccurate. It is not valid. It cannot be substantiated. It is not justified under any objective criteria. What might be true is that we have sent more money through FEMA to try to help, but it is anemic. It is not functioning well. And the money is not getting to the people who need it.

That is why Senator COCHRAN and Senator BYRD have stepped up with a reallocation and said: OK, we hear you Louisiana. We hear you Mississippi. Let's not add any money, but let's take $30 billion of the FEMA money, since it is sitting in a bank account not being used, and move it over, give it to our Governors with community development block grants, full accountability, full flexibility.

We will send you some money, $6,000 per child for your education, because the schools took these children in. They knocked at the door. The schools took our children in, 370,000. They were never asked if they could pay. They have been educating these children for 6 months. The Federal Government has yet to give one of these school systems in Houston or Baton Rouge or Lafayette or Jackson, MS, one penny for taking these kids in. I don't know, do we expect schools that are having trouble anyway to take in children and educate them for free? They have added teachers, classrooms, and the Federal Government sits here giving money out right and left through every door as fast as it can get out, and we can't give money to school systems educating kids whose homes flooded and whose parents have no business anymore.

Senator COCHRAN has put that in his bill, mostly for Louisiana. We don't think that we have to keep saying that if we don't get better levees, not only can we not rebuild our city and region,

but it would be morally the worst thing that could be done not to help people feel safe and protected as they make decisions to go back. We have put a substantial amount of money in the budget with Senator COCHRAN's proposal for category 3 real levee protection and a downpayment on category 5 which is essential to us as we rebuild. With the community development block grant, the Governors, along with our parish presidents and municipal officials, can take that money and fashion it to help match private sector donors, to help supplement insurance payments, to help with some strategic housing initiatives and begin getting tools and capital and money out in these communities in the right ways to help stand them up.

We have to argue about this, not adding money to the budget, reallocating FEMA, and yet we are still arguing with the House on the total amount. Maybe they don't want to do 17, so we are down to this or that.

This week we cannot leave until we pass a Cochran-Byrd reallocation of the President's supplemental. With all due respect to the administration, the supplemental that was sent to us was a bill of $17 billion, except for some serious levee money which I thank the administration for. I thank the administration for putting that money—I think it was $1.6 billion—in their original request. We appreciate it. But the rest of the money in that bill was basically to refurbish Federal facilities.

I want to show again the picture of the lady. This is what I want to refurbish. I understand we have to refurbish Federal facilities. I know that Federal bureaucracies are important. But this is where we are trying to get the money, to citizens such as this woman who have worked hard their whole life, raised their family, never asked anybody for too much. Now they are sitting in a house with nothing. This is whom we are trying to help. We are trying to get money to the private sector, to private property owners, not to refurbish Federal Government buildings. So Senator COCHRAN took that bill and said: If you want to help refurbish Federal buildings, fine, but we need to add money to help citizens, patriots, business owners in our States.

I sure hope we can do that because it will be a shame if we do not.

I want to add a quote from Governor Haley Barbour. There has been a lot of discussion about Mississippi's approach and Louisiana's approach. But pain has a way of bringing people together.

Governor Barbour said yesterday:

> We are at a point where our recovery and renewal efforts are stalled because of inaction in Washington, D.C., and the delay has created uncertainty that is having a very negative effect on our recovery and our rebuilding.

If this is coming from Governor Barbour, who is part of the party in power and was head of the Republican Party for many years, who lost a fraction of the homes that we lost, how do you think the people of Louisiana are feeling about the stalled recovery effort and the desperation as they see Congress winding down for the holidays? They ask: Why aren't people in Washington understanding what we are going through?

I want to read for the RECORD an appropriate and moving quote, right on target as far as I am concerned, from Vanity Fair in November. It says:

> . . . when the damage is this catastrophic, the people so helpless, the government so weak and clumsy, we expect it to take place somewhere else—on the coast of Sri Lanka or Bangladesh, for instance—somewhere distant and more poor. . . . We do not expect to see our government so impotent and indifferent that it is completely paralyzed . . .

I know the men and women with whom I work. I don't find them to be incompetent or paralyzed. I believe they are sensitive and smart and intelligent people. What is it that is keeping us in this Congress from understanding FEMA isn't working. The Red Cross is not sufficient. People are suffering. New tools are needed. Let's get about helping people here at home.

There has been some unbelievable debate about whether New Orleans should be rebuilt. Our city has been there for 300 years. Thomas Jefferson leveraged the entire Treasury to buy the city of New Orleans because of its strategic advantage, which was true then. It is true now. Andrew Jackson took his troops and defeated the British to protect it in 1815 because it is the greatest port system in America. It is America's only energy coast. You can't have a great nation without protecting your Southern border. You can't have great trade. What thought of anyone would be that we can't rebuild New Orleans in the region of south Louisiana after we have given so much to this economy? We are not a charity case. We need help, we need respect, and we need a partner.

We will rebuild New Orleans and south Louisiana and the gulf coast of Mississippi. The people have spoken, and the spirit is strong. We may not have houses to live in or businesses to go to, but the people who have lived in this part of the world are strong people. We are Black and White, Hispanic, different socioeconomic levels, but we have lived there. The question is, Will we have a partner in the Federal Government? This week we will see if we have a partner.

Let's get on to the business of getting these bills passed. We will be slowing it down until we do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, is there a speaker designated to go next?

The PRESIDING OFFICER. The Senator from Iowa is previously designated to follow the Senator from Louisiana.

Mr. FEINGOLD. In light of the fact that the Chair indicated that the Senator from Iowa is to be next, I ask unanimous consent that I may speak next, and that I may use as much time as I may require.

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

The Senator from Iowa is recognized.

CHILDHOOD OBESITY

Mr. HARKIN. Mr. President, over the last several years, we have repeatedly heard alarming reports about the rising tide of overweight and obesity in the United States, particularly among young children. Over the past two decades, the rate of obesity has doubled in children and tripled in adolescents. Fifteen percent of the children in this country are now overweight. In fact, the United States has a higher percentage of overweight teens than any other industrialized country.

This comes at a high price for our country, both in terms of the long-term physical health of our citizens and the enormous health care costs our Nation faces. Just last week, the Institute of Medicine of the National Academy of Sciences released a new report: ''Food Marketing to Children and Youth; Threat or Opportunity?''

The report focused on one big factor that contributes to the childhood obesity epidemic: the relentless multibillion-dollar marketing of junk food to our children. This landmark report is the most comprehensive and systematic review to date of the impact of food marketing on the diets of American youth. Its conclusions are troubling, but they hardly come as a surprise to parents who know well the effects of food marketing on their children.

In a nutshell, the Institute of Medicine concluded that there is strong scientific evidence that food marketing influences food preferences, the purchases and diets of children age 12 and below. Even more important, the Institute of Medicine confirms what many had suspected before, that ''television advertising influences children to prefer and request high-calorie and low-nutrient food and beverages.''

Let me just read two sentences from the executive summary. I am quoting directly from the Institute of Medicine's finding:

> It can be concluded that television advertising influences children to prefer and request high-calorie and low-nutrient foods and beverages.

That is a key finding. Next, on the broad conclusions: Food and beverage marketing practices geared to children and youth are out of balance with healthful diets and contribute to an environment that puts their health at risk.

There you have it. Now, 2 years ago, I requested this study to be done. We put money in the appropriations bill for the CDC to do the study. They contracted with the National Academy of Sciences and the Institute of Medicine to do the study. This is an unbiased landmark study. It proves conclusively that our kids are being inundated nonstop with advertising that puts their health at risk.

The food industry is a $900 billion-a-year business. It spends billions of dollars promoting food products, much of it targeted at kids. The IOM report is important because it outlines in great detail how over the past decade advertising directed at our children has grown to a point where they are bombarded nonstop with ads. Indeed, food marketing has expanded in both intensity and variety into nearly all areas of kids' lives.

The food industry spends more than $11 billion a year targeting kids with marketing campaigns through television, movies, magazines, Internet, in-school marketing, kids clubs, toys, coupons, and product placement in movies and books. Marketing to kids has become so pervasive and sophisticated that over the past several years marketing firms have even begun to employ child psychologists who specialize in this field to help devise their strategies.

On the advice of these psychologists, advertisers make use of media fantasy figures, celebrities, and cartoon characters. They use messages crafted to imply that products will give kids power, make them popular. The aim is simply to exploit kids' imaginations and their vulnerabilities and to sell them products or to get them to nag their parents to buy certain products.

What kind of foods are they marketing to our kids? We are not talking about apples and pears and peaches and broccoli and carrots. We are talking about high-fat, high-sugar, high-sodium foods with little or no nutritional value.

The food industry contends it is concerned about the health and nutrition of our children, and that it is taking active steps to change its marketing practices to introduce new products that are healthier for our children. But is that really the case?

In limited instances, the industry has taken some positive steps. For example, in the past year, both Kraft Foods and Pepsico have announced they will take steps to curb the marketing of unhealthy food products to children, and instead focus on the promotion of healthier products. I have commended publicly, and I do so again today on the floor of the Senate—both Kraft and Pepsico for taking a leadership position in this area.

But here is the problem. This Institute of Medicine report is clear that such responsible actions are far from the industry norm. As you can see from this chart, the number of new products that the food industry has targeted to kids have gone up tenfold over the past 10 years, from around 50 to just under 500 in 2004—500 new products per year—not apples, not salad bars. According to the Institute of Medicine, these 500 products are high in calories and sugar and low in nutrients. This is what dominated those products.

Let's take a look at some of the examples of what is happening to our kids. Many advertisements for junk food snacks use characters popular with children. Here is one. They range from Spiderman to Sponge Bob Square Pants. Kids know these characters. They admire these characters. Quite frankly, when I saw ''Shrek 1'' and ''Shrek 2,'' I kind of liked Shrek. He became a loveable, nice guy who wanted to do good. Now what do we see? Here is Shrek advertising Twinkies, green Twinkies with a green filling.

Now Shrek has a powerful appeal to kids' minds. Kids see the movie Shrek and they like Shrek. And Shrek, why, he likes Twinkies, so Twinkies must be OK to eat. That is what that message says.

What do we know about Twinkies? The nutritional value is zero, harmful to kids' health.

Shrek now becomes a bad guy trying to get our kids to eat unhealthy food. Shame on the advertisers who take a likable, loveable character when he was first introduced to kids in the movies and now using Shrek to poison our kids. I use the word ''poison'' because that is what this food does, it poisons our kids by making them obese and unhealthy.

Then what you can do when you see this ad, you can visit twinkies.com. I will show that a little bit later in my presentation.

It is not just limited to television. Food marketing has gone on in numerous ways that we are just beginning to explore. The Institute of Medicine report was shocking. One thing—I didn't know this—only 20 percent of all food and beverage marketing in 2004 was devoted to the traditional methods of television, radio, and print. Only 20 percent. Eighty percent is going to new forms of marketing—product promotions, character licensing, school marketing.

At one time, our schools were considered safe havens for our kids, places of learning that insulated our kids from crass commercial influences. No longer is that the case. Our schools have been inundated with commercial messages that are now a major advertising medium that these food companies are using to establish brand loyalty and to get kids to eat junk food.

Here is a photograph of a hallway in a high school. You have the Coke machine, you have a POWERade machine. You have a vending machine with potato chips, Fritos, cookies, candy bars, M&M's. Nothing in this entire display is of any nutritional value. That is what is happening in schools.

Let's not forget that a lot of these food marketing companies have exclusive contracts with schools and school districts to link the sale of soda pop to cash payments or equipment assistance to schools. These are the very foods that are making our kids obese, contributing to their unhealthy lifestyles.

I often ask parents, What would you think of a parent who sat down with his or her child before they went to school in the morning and measured out 15 teaspoons of sugar, put it in a little plastic bag and told the kid: Here, you can take this to school and eat it. Or, on second thought, measure out 30 teaspoons of sugar, give it to the kid and say: Here, take this to school and eat it. You would think no parent would ever do that. But some children to buy two soda pops every day and two of those 20-ounce soda pops will have 15 teaspoons of sugar each. One 20-ounce soda pop equals 15 teaspoons of sugar. That is why others call this liquid candy. A 20-ounce Coke, liquid candy, that is all it is, 15 teaspoons of sugar.

Why do we allow this? Why do we allow this in our schools? It is sending a message to our kids that this is OK? It is in school, it is promoted by the schools, so it must be OK. That is a new marketing technique they have.

Now we have other techniques such as branded toys and new marketing techniques aimed at babies? Hang on, wait until you see this one: A baby with a 7-Up bottle. Here is a baby being nursed on a bottle that has a 7-Up logo on it. One might say, well, that baby can't buy 7-Up. No, but that baby's eyes are picking up things. When that baby gets older, that is going to be stuck in that baby's mind somewhere in the deep recesses, that was good because what that baby got out of that bottle was good healthy milk, formula probably. And now they are going to associate that with 7-Up. Imagine that, that early in life.

You think that is bad, hang on, you haven't seen anything yet. Look, before I put this picture up here, let's agree on one thing. We all agree—I know the occupant of the Chair and I bet he agrees with this, being a doctor—that the most beneficial, nutritious food for a newborn baby is a mother's milk, breastfeeding. We all know that breastfeeding is the best, and any doctor will tell you if you are capable, you ought to breastfeed your child.

Now look what we have here: A billboard with a baby breastfeeding on a McDonald's Burger. That just about borders on the obscene. It can't get any worse. I understand this did not run in the United States, but it ran on billboards in Europe. Here is a baby, obviously less than a year old supposedly breastfeeding on a McDonald's hamburger bun. Not only does this ad imply that fast food is a developmentally appropriate product for infants, it suggests that fast food is an appropriate replacement for the nutrition of breastfeeding, which is the perfect form of nutrition for babies.

Equating a McDonald's hamburger with breastfeeding, while it might be intended to be humorous, is no laughing matter. It sends very subtle messages that breastfeeding is nutritious and so are McDonald's hamburgers.

Now we have other ways of marketing. I tell you, these are psychologists who devise these ads. They know what they are doing. How about the candy counting books? Here we have ''Reese's Pieces Count by 5,'' ''Hershey's Subtraction'' book, the

''Skittles Riddles Math'' book, the ''Twizzlers Percentage'' book, the ''Hershey's Fraction'' book, and the ''Hershey's Kisses Addition'' book.

Here is where I am going to pay tribute again to Kraft Foods. On this floor periodically in the past I have shown the Oreo counting book. Kraft Foods discontinued that practice. Kraft Foods does not allow that any longer. God bless them; good for Kraft Foods.

But here is the problem: You get one company who actually acts responsibly, and look what the rest of them do. They move into the marketplace and take market share away with their counting books.

Again, 2-year-olds, 3-year-olds learn with counting books—Hershey's, M&M's, and Reese's Pieces. I don't have it here, but I saw one counting book where you lay it out and you actually put the M&M pieces on there, and when you count one, you get to eat that one piece, and when you count two, you get to take the two pieces of M&M's off and eat those two, until you get to 10 M&M pieces. Junk food, building brand loyalty early.

Then we have toys. How about the toys? It is an emerging trend that puts the food on the toy so you don't just get it for 30 seconds, you get it all the time you play with your toys.

Here we have a Coca Cola princess, whatever, a cheerleader. We have a Jell-O Barbie. We have a McDonald's Barbie.

So little kids play with these and they build that brand loyalty. They play with a Barbie wearing a McDonald's logo or a Jell-O or a Little Debbie brand. That is what we have come to, where kids are inundated day after day not with just 30-second ads but with everything they play with, everything they see. Now they go to school, and they see the same thing in school. This is a recent innovation. It was not like this 20 years ago.

Now we have the Internet, which is becoming a growing segment of the food marketing industry. Remember, I said earlier that Shrek urges children to visit twinkies.com, well, here you go. If one goes to twinkies.com, they go to Planet Twinkie. At Planet Twinkie, there are all of these little interactive things, visit the Twinkie shop, the Hostess Hall of Fame, the chocolate and cupcakes and snowballs. That is Planet Twinkie.

So a kid sees Shrek, Shrek says: Visit my Web site, visit twinkie.com.

Well, again, what are they saying to kids? They are saying: Eat junk food. It is fun and it is an adventure just to eat junk food and eat Twinkies and to eat candy and stuff, and it is good for you. And guess what, it will make you smart because we do it in school; you go there to school to learn, so since we do it all in school it makes you smart, too.

So when one looks at all of these marketing techniques together, television, schools, product tie-ins, promotions, the Internet, branded baby products, what we are seeing is that the food marketers seek to do nothing less than envelop our children every day during all of their waking hours in a commercial environment that encourages them to eat unhealthy food.

For years the food marketers have been saying: One cannot really prove that food marketing influences children's diets. Not anymore. With this study, food marketers can no longer say that food marketing does not influence children's diets. The evidence is quite clear that marketing has a negative influence on children's food preferences and on their diets.

Some might say: Well, that is obvious. The food industry does not spend $11 billion a year on marketing to kids because it does not work, because they want to throw that money away. They spend it because it works brilliantly, inducing children to purchase it themselves or to beg, whine, and cajole their parents into buying it for them.

Some might say: What about the parents' responsibility? Parents should be responsible, but parents' control is being eroded. Food marketers are inserting themselves between parents and their kids. Their control is being eroded in the face of a highly sophisticated billion-dollar industry. This is not a level playing field.

Again, what can we do? Someone who has been listening to me might say: Well, OK, HARKIN, what can you do? That is the way business works. What can we do about it?

There is plenty we can do about it. The IOM report makes recommendations on what we ought to do. First, they say the industry needs to exhibit a greater level of corporate responsibility. Amen. Some of them have. But here is the problem: If it is not industrywide, one food company may do something good such as Kraft did, got rid of the Oreo cookie counting book. So what happens, their competitor moves in with other counting books. So it has to be industrywide.

IOM calls for sweeping change in the way the food industry, the beverage industry, the fast food restaurant industry, the media, and the entertainment industries do business. They call on all of those industries to use the same creativity, resources and marketing practices that they currently use to sell junk food to instead promote healthier diets for kids. They call on the food companies to change the products they advertise as well as the products they produce. They say that business as usual has to change and has to change now.

I hope corporate America is listening because if they do not change, then we in Congress will make them change. Almost 25 years ago, the Federal Trade Commission warned Congress about the dangers of advertising aimed at children. What did Congress do? We attacked the FTC and took away its regulatory authority as it pertains to children's ads.

In 1978, the FTC undertook an investigation and found that TV advertising directed at young children was both unfair and deceptive. They found that the advertising of high sugar foods to children is unfair and deceptive. They suggested that restrictions on ads directed at the young and vulnerable minds might be appropriate. But the broadcast industry went nuts. The food industries went nuts. The advertisers went nuts, and they got Congress to kill the messenger.

In 1981, this Congress stripped the Federal Trade Commission of its regulatory authority as it pertained to children's advertising. It expressly prohibited the Federal Trade Commission from following through on its proposals to ban or restrict advertising directed at children. This new law made it next to impossible to regulate advertising directed at kids. It is a little known fact that right now the FTC has more authority to regulate advertising at me and you and adults than it does to our kids, and here is how it does that.

There are two ways the Federal Trade Commission can regulate advertising: If it is unfair or deceptive.

In 1981, this Congress cut off one arm of the FTC in regulating advertising to kids. The FTC can only regulate advertising to kids if it is deceptive, not if it is unfair. Interesting point. One might say: Well, an advertisement of junk food is not deceptive, but is it unfair? It is, according to the Institute of Medicine because the Institute of Medicine said that kids lack the cognitive ability to discern between advertising, persuasive intent advertising and a program.

It stands to reason, if one is a young kid, they do not understand what advertising is all about. They get inundated with all of this, and it makes an impression on them, sticks with them, but they do not understand this is advertising. That is what the Institute of Medicine says. This is a medical report.

So I submit that any advertising that advertises high-calorie, high-in-fat junk food to kids that has no nutritional value, that is inherently unfair because kids do not understand the intent. Forget about deceptive. It is unfair. It may not be unfair to adults, since we understand what advertising is about—we should have that ability—but it is to kids. That is why we need to give the Federal Trade Commission the authority to regulate advertising to children both on unfairness and deceptiveness, as it does to adults. I want to point out, in closing, that I have introduced legislation to give FTC that authority.

In addition, the IOM talks about Government responsibility. It says that:

> Government at all levels should marshal the full range of public policy approaches (e.g., subsidies, legislation, regulation, federal nutrition programs), to foster the development and promotion of healthful diets for children and youth.

It says, ''Government and industry should work together to set higher standards for marketing to children.''

They called for changes in the school environment, to get rid of the junk food and the vending machines.

When we come back next session, Senator SPECTER and I will introduce the Child Nutrition Promotion and School Lunch Protection Act. This legislation will, per the recommendation of the IOM, require the Department of Agriculture to update its nutritional guidelines for school food sales and ensure that the foods available to kids during the school day promote, rather than undermine, their health and learning.

We in this Congress have a responsibility to protect America's children from the sophisticated, aggressive, relentless marketing of junk food to our children. We have a responsibility to stick up for our parents. Our parents don't have a chance when our kids are inundated, day after day, hour after hour, even in places where parents don't have control—in our schools, when they watch a movie, when they pick up a book, a counting book.

I was in a school not too long ago, looking at some renovations in a school, an elementary school. Do you know what the kids had to sit on? Coca-Cola chairs; little chairs with the Coca-Cola legend, red and white, with Coca-Cola written on it. I assume that they donated the chairs to the school. But this is the idea, to get it into the kid's head early, that education and having a high sugar soft drink go hand in hand.

Late in her life, Jackie Kennedy said a very wise thing. She said, ''If you botch raising your children, nothing else you do in your life matters very much.''

With what we now know, thanks to the IOM report, what we know about the destructive impacts of junk food marketing to the kids, with the new insights thanks to the Institute of Medicine, it is clear by allowing the food industry to market junk foods to our kids we are botching the raising of all of our children.

Again, this is enough. This report makes it clear that it is time to say to those who are enveloping our kids in this sort of 24-hour-a-day, 7-day-a-week nonstop advertising, that it is enough. Foods that are high in fat, sugar, and salt have their place. We all like to have a cookie. I enjoy a piece of candy as much as anybody else. They have their place. But they ought to be kept in their place—not in schools, not in advertising. They ought to be kept in their place and the place to start is with sensible, long overdue regulation of the advertising and marketing of junk food to children.

I yield the floor.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from Wisconsin is recognized.

Mr. FEINGOLD. On behalf of Senator DODD, I wish to inform our colleagues that for health reasons Senator DODD will necessarily be absent from Senate business for the remainder of the week. He thanks his colleagues for their courtesy and understanding.

Mr. President, I commend my colleagues who came to the floor yesterday to discuss the PATRIOT reauthorization, and I thank Chairman SPECTER for initiating a very interesting debate with me when we were both on the floor. That is exactly the kind of dialog we want to see on the floor more often. I hope we will see a lot more of it over the next few days. The PATRIOT Act reauthorization conference report has come to the Senate and the Senate will be faced with a very important choice. I expect this debate will be lengthy and hard fought, so I wanted to take some time tonight to lay out the background and the context for this debate, and to discuss my concerns about the conference report with some specificity.

Because I was the only Senator to vote against the PATRIOT Act in 2001, I want to be very clear about something from the start. I am not—not—opposed to reauthorization of the PATRIOT Act. I supported the bipartisan compromise reauthorization bill that the Senate passed earlier this year, that had no Senator at all objecting. I believe the bill should become law. The Senate reauthorization bill is not a perfect bill, but it is a good bill. If that were the bill we were considering today, I would be on the floor speaking in support of it. In fact, we could have reauthorized the PATRIOT Act several months ago if the House had taken up the bill the Senate approved without any objections.

I also want to respond to those who argue that people who are demanding a better conference report want to let the PATRIOT Act expire. That is actually nonsense. Not a single Member of this body is calling for any provision of the PATRIOT Act to completely expire. As Senator SUNUNU eloquently argued yesterday, just because we are coming up against the end of the year does not mean we should have to compromise the rights of law-abiding Americans. There are any number of ways we can get this done and get it done right before the end of the year.

Let me also be clear about how we ended up voting on a badly flawed conference report just days before certain provisions of the PATRIOT Act expired. The only reason we are debating this conference report in the middle of December, rather than in the middle of September or October, is because the House—the House—refused to appoint its conferees for 3½ months. It passed its reauthorization bill on July 21, but it did not appoint the conferees until November 9. In the Senate, on the other hand, we passed a bill by unanimous consent on July 29 and we appointed our conferees the very same day. We were ready and willing to start the process of resolving our differences with the House right away, leaving plenty of time to get this done without the pressure of the end-of-the-year deadline.

So when I hear Members of the House already attempting to place blame on those of us in the Senate who object to this conference report, I am a little bit frustrated. If there is anyone to blame, it is the House leadership for playing a game of brinkmanship with this crucial and controversial issue. Senators who are standing strong for the rights and freedoms of the American people will not be at fault if parts of the PATRIOT Act expire.

I also want to clear up one related misconception. I have never advocated repeal of any portion of the PATRIOT Act. In fact, as I have said repeatedly over the past 4 years, I supported most of the provisions of the bill. There are many good provisions in the bill. As my colleagues know, the PATRIOT Act did a lot more than expand our surveillance laws. Among other things, it set up a national network to prevent and detect electronic crimes such as the sabotage of the Nation's financial sector, it established a counterterrorism fund to help Justice Department offices disabled in terrorist attacks to keep operating, and it changed the money laundering laws to make them more useful in disrupting the financing of terrorist organizations. One section of the PATRIOT Act even condemned discrimination against Arab and Muslim Americans.

Even some of the act's surveillance sections were not troubling. In fact, one provision authorized the FBI to expedite the hiring of translators. Another added terrorism and computer crimes to the list of crimes for which criminal wiretap orders could be sought. And some provisions helped to bring down what has been termed ''the wall,'' the wall that had been built between intelligence and law enforcement agencies.

This week we have heard a lot of people saying we must reauthorize the PATRIOT Act in order to ensure that this wall does not go back up. Let us make this clear. I supported and continue to support the information-sharing provisions of the PATRIOT Act. One of the key lessons we learned in the wake of September 11 was that our intelligence and law enforcement agencies were not sharing information with each other, even where the statutes permitted it. In the PATRIOT Act we tore down the remaining legal barriers.

Unfortunately, the law was not so much a legal problem as a problem of culture and the report of the 9/11 Commission made that very clear. I am sorry to report that we have not made as much progress as we should have in bringing down those very significant cultural barriers to information sharing among our agencies.

The 9/11 Commission report card that was issued last week gave the Government a ''D'' for information sharing because their agencies' cultures have not changed enough these 4 years after the change in the law in the PATRIOT Act.

There is a statement issued by Chairman Kean and Vice Chairman Hamilton that explained:

You can change the law, you can change the technology, but you still need to change the culture. You still need to motivate institutions and individuals to share information.

So far, unfortunately, our Government has not met the challenge.

Talking about the importance of information sharing, as administration officials and other supporters of the conference report have done repeatedly, is part of a pattern that started several years ago. Rather than engage in a true debate on the controversial parts of the PATRIOT Act, as Senator SPECTER did yesterday, unfortunately many proponents of the PATRIOT Act point to noncontroversial provisions of the PATRIOT Act and they talk about how important they are. They say this bill must be passed because it reauthorizes those noncontroversial provisions.

That doesn't advance the debate. It just muddies it further. In fact, it is a red herring.

I have news for those who would try to use that tactic. It won't work. We don't have to accept bad provisions to make sure that good provisions become law. I hope the Senate will make that lesson very clear this week.

Tonight, I want to advance the debate, spend some time explaining my specific concerns about the conference report in some key areas. It is very unfortunate that the whole Congress could not come together, as the Senate did around the bipartisan compromise reauthorization bill. Back in July, the Senate Judiciary Committee, on which I serve, voted unanimously in favor of a reauthorization bill that made meaningful changes to the most controversial provisions of the PATRIOT Act to protect the rights and freedoms of innocent Americans. Shortly thereafter that bill passed the full Senate by unanimous consent. It was not easy for me to support that Senate bill which fell short of the improvements contained in the bipartisan SAFE Act.

At the end of the day, the Senate bill contained meaningful changes to some of the most problematic provisions of the PATRIOT Act, provisions that I have been trying to fix since October of 2001. So I decided to support it. I made it very clear at the time, however, that I viewed that bill as the end point of negotiations, not the beginning. In fact, I specifically warned my colleagues that the conference process must not be allowed to dilute the safeguards in this bill. I meant it. But it appears that people either weren't listening or weren't taking me seriously.

This conference report, unfortunately, does not contain many important reforms of the PATRIOT Act that we passed in the Senate. So I cannot support it. In fact, I will fight it with every ounce of strength I have. And I am delighted to be part of a strong bipartisan consensus that believes, as I do, that this conference report is unacceptable.

Let me start with section 215, the so-called ''library'' provision, which has received so much public attention.

I remember when the former Attorney General of the United States called the librarians who were expressing disagreement with this provision ''hysterical.''

What a revelation it was when the chairman of the Judiciary Committee, the Senator from Pennsylvania, opened his questioning of the current Attorney General during his confirmation hearing by expressing his concern—the chairman's concern—about this provision of the PATRIOT Act. He got the Attorney General to concede that, yes, in fact, this provision probably went a bit too far and could be improved and clarified. That was an extraordinary moment. It was a moment, I am afraid, that was very slow in coming and long overdue.

I give credit to the Senator from Pennsylvania because it allowed us to start having, for the first time, a real debate on the PATRIOT Act. But credit also has to go to the American people who stood up despite the dismissive and derisive comments of Government officials and said with loud voices: The PATRIOT Act needs to be changed. And these voices came from the left and the right, from big cities and small towns all across the country. So far, over 400 State and local governmental bodies have passed resolutions calling for revisions to the PATRIOT Act. I plan to read some of those revisions on the floor of the Senate in this debate, and there are a lot of them. Nearly everyone mentions section 215.

Section 215 is at the center of this debate over the PATRIOT Act.

It is also one of the provisions that I tried unsuccessfully to amend on the floor in October 2001.

So it makes sense to start my discussion of the specific problems I had with the conference report with the infamous library provision.

Section 215 of the PATRIOT Act allowed the Government to obtain secret court orders in domestic intelligence investigations, to get all kinds of business records about people, including not just library records but also medical records and various other types of business records. The PATRIOT Act allowed the Government to obtain these records as long as they were ''sought for''—that is all, ''sought for''—in a terrorism investigation. That is a very low standard. It doesn't require that the records concern someone who is suspected of being a terrorist or a spy, or even suspected of being connected to a terrorist or a spy. It didn't require any demonstration of how the records would be useful in the investigation.

Under section 215, the Government simply said—this is fact—all the Government has to do is say the magic words, that it wanted records for a terrorism investigation, then the secret FISA court was required—required—to issue the order, period. No discretion. The judge had to give the order.

To make matters worse, recipients of these orders are subjected to an automatic gag order. They cannot tell anyone that they have been asked for the records.

Some in the administration and even in this body took the position that people shouldn't be able to criticize these provisions until they can come up with a specific example of abuse.

The Attorney General makes that same argument today in an op-ed in the Washington Post when he simply dismisses concern about the PATRIOT Act by saying: ''There have been no verified civil liberties abuses in the 40 years of the Act's existence.''

That has always struck me as a strange argument since 215 orders are issued by a secret court, a secret court. And people who receive them are prohibited by law from discussing them.

In other words, the way the law is actually designed, it is almost impossible to know if any abuses have occurred. How would we find out? It is a secret court and nobody can talk about it.

The Government should not have the kind of broad, intrusive powers it gave itself in section 215. And the American people shouldn't have to live with a poorly drafted provision that clearly allows for records of innocent Americans to be searched and just hope that the Government uses it with restraint.

A government of laws doesn't require its citizens to rely on the goodwill and the good faith of those who have those powers, especially when adequate safeguards can be written into the laws without compromising their usefulness as a law enforcement tool.

After lengthy and difficult negotiations, the Judiciary Committee came up with language this year that achieved that goal. It would require the Government to convince a judge that a person has some connection—some connection—to terrorism or espionage before obtaining their sensitive records. When I say some connection, that is what I mean.

The Senate bill standard is the following: One, that the records pertain to a terrorist or a spy; two, the records pertain to an individual in contact with or known to a suspected terrorist or spy; or, three, that the records are relevant to the activities of a suspected terrorist or spy.

That is a three-pronged test in the Senate bill. I think it is quite broad. I think it is more than adequate to give law enforcement the power it needs to conduct investigations but also at the same time protecting the rights of innocent Americans.

It would not limit the types of records that the Government could obtain, and it does not go as far to protect law-abiding Americans as I might prefer, but it would make sure the Government cannot go on a fishing expedition into the records of innocent people.

The Senate bill would also give recipients of a 215 order an explicit, meaningful right to challenge business record orders and the accompanying gag orders in court. These provisions

passed the Senate Judiciary Committee unanimously after tough negotiations late into the night. Unfortunately, the conference report just did away with their delicate compromise.

First and most importantly, it does not contain the critical modification to the standard for section 215 orders.

The Senate bill permits the Government to obtain business records only if it can satisfy one or more prongs of the three-pronged test that I just described.

This is a broad standard with a lot of flexibility. But it retains the core protection that the Government cannot go after someone who has no connection whatsoever to a terrorist or a spy or their activities.

What does the conference report do? The conference replaces the three-pronged test with a simple relevant standard. It then provides the presumption of relevance if the Government meets one of the three prongs I just described.

But it is silly to argue that this is adequate protection against a fishing expedition. The only actual requirement in the conference report is that the Government show that the records are relevant to an authorized intelligence investigation. Of course, ''relevance'' is a very broad standard that can arguably justify the collection of all kinds of information about law-abiding Americans.

The three prongs now are just examples of how the Government can satisfy the relevance standard, and that is simply a loophole, or an exception that swallows the rule. The exception is the rule.

In fact, a better way to say it is that this is actually a complete rule, and the exception has been rendered meaningless.

I will try to make this as straightforward as I can. The Senate bill requires the Government to satisfy one of three tests. Each test requires some connection between the records and a suspected terrorist or spy. The conference report says that the Government only is required to satisfy a new fourth test, which is just relevance, which does not require a connection between the records and a suspect. So basically the other three tests no longer provide any protection at all.

The conference report also does not authorize judicial review of the gag order that comes with a 215 order. While some have argued that the review by the FISA court of a Government application for a section 215 order is equivalent to judicial review of the accompanying gag order, that is simply inaccurate. The statute does not give the FISA court any latitude to make an individualized decision about whether to impose a gag order when it issues a section 215 order. It is required by statute to include a gag order in every section 215 order. That means that the gag order is automatic and permanent in every case. This is a serious deficiency, one that very likely violates the first amendment.

In litigation challenges, a semi-permanent national security letter statute, two courts have found first amendment violations because there is no individualized evaluation of the need for secrecy. I have these decisions right here; perhaps I will have a chance to read them in detail during the debate.

I will discuss other provisions in the conference report that fail to adequately address the concerns expressed in this Senate and around the country about the PATRIOT Act. Section 215 is a linchpin of this debate. To keep faith with the American people and with our constitutional heritage, we have to address the problems with section 215 in this reauthorization bill. There is no way around that.

Let me turn next to a very closely related provision that has finally been getting the attention it deserves—the national security letter, or NSL, an authority that was expanded by sections 358 and 505 of the PATRIOT Act. This NSL issue has flown under the radar for years even though many of us have been trying to bring more public attention to it. I am gratified that we are finally talking about these NSLs, in large part due to a lengthy Washington Post story published last month explaining just what these authorities are and reporting that the use of these powers has increased dramatically.

What are NSLs? Why are they such a concern? Let me spend a little time on this because it is important. National security letters are issued by the FBI to businesses to obtain certain types of records. They are similar to section 215 orders but with one very critical difference: The Government does not need to get any court approval whatever to issue that. It does not have to go to the FISA court and make even the most minimal showing. It simply issues the order signed by the special agent in charge of a field office or some other supervisory official. NSLs can only be used to obtain such categories of business records, while section 215 can be used to obtain ''any tangible thing.''

Even the categories reachable by NSLs are broad. Specifically, they can be used to obtain three types of business records: subscriber and transactional information related to Internet and phone usage, credit reports, and financial records. That category has been expanded to include records from all kinds of everyday businesses such as jewelers, car dealers, travel agents, and even casinos.

Just as with section 215, the PATRIOT Act expanded the NSL's authorities to allow the Government to obtain records of people not suspected of being or even connected to terrorists or spies. The Government need only certify that the documents are either sought for or relevant to an authorized intelligence investigation—a far-reaching standard that could be used to obtain all kinds of records about innocent Americans. Just as with section 215, the recipient is subject to an automatic permanent gag rule, and the conference report does very little to fix the problems of the national security letter authorities.

In fact, I disagree with the Senator from Pennsylvania, the chairman of this committee, on this point. In fact, I believe it could be argued that the conference report makes the law worse. Let me explain why.

First, the conference report does nothing to fix the standard for issuing a national security letter. It leaves in place the breathtakingly broad relevant standard.

Some have analogized NSLs to grand jury subpoenas issued by grand juries in criminal investigations to obtain records relevant to the crime they are investigating. So the argument goes, What is the big deal if NSLs are also issued under a relevant standard for intelligence investigations? Two critical differences make that analogy break down very quickly.

First of all, the key question is, Relevant to what? In criminal cases, grand juries are investigating specific crimes, the scope of which is explicitly defined in the Criminal Code. Although the grand jury is quite powerful, the scope of its investigation is limited by the particular crime it is investigating. In sharp contrast, intelligence investigations are by definition extremely broad. When you are gathering information in an intelligence investigation, anything could potentially be relevant.

Suppose the Government believes a suspected terrorist visited Los Angeles in the last year or so. It might want to obtain and keep the records of everyone who has stayed in every hotel in Los Angeles or who booked a trip to Los Angeles through a travel agent over the past couple years, and it could argue strongly that information is relevant to a terrorism investigation because it would be useful to run all those names through the terrorist watch list.

I don't have any reason to believe that such broad use of NSLs has happened. But the point is, when you are talking about an intelligence investigation, relevance is a very different concept than in criminal investigations. It is certainly conceivable that NSLs could be used for that kind of a broad dragnet in an intelligence investigation. Nothing in the current law prevents it. The nature of criminal investigations and intelligence investigations is different. Let's not forgot that.

Second, the recipients of grand jury subpoenas are not subject to the automatic secrecy that NSL recipients are. We should not underestimate the power of allowing public disclosure when the Government overreaches. In 2004, Federal officials withdrew a grand jury subpoena issued to Drake University for a list of participants in an antiwar protest. Why? Because there were public revelations about the demand. That could not have happened if the request had been made under section 215 or for records available via the national security letter authority.

Fortunately, there are many other reasons the conference report does so little good on NSLs. Let's talk about judicial review. The conference report creates the illusion of judicial review for NSLs, both for the letters themselves and for the accompanying gag rule, and if you look at the details, it is drafted in a way that makes the review virtually meaningless.

With regard to the NSLs themselves, the conference report permits recipients to consult their lawyer and seek judicial review, but it allows the Government to keep all of its submissions secret and not share them with the challenger regardless of whether there are national security interests at stake. So you can challenge the order, but you have no way of knowing what the Government is telling the court in response to your challenge. Parties could argue about something as garden-variety as attorney-client privilege with no national security issues, and the Government would have the ability to keep this secret. This is a serious departure from our usual adversarial process. I believe it is very disturbing.

The other significant problem with the judicial review provisions is the standard for getting the gag rule overturned. In order to prevail, the recipient has to prove that any certification by the Government that disclosure would harm national security or impair diplomatic relations was made in bad faith. Now, that is a standard of review that is virtually impossible to meet. So what we have here is the illusion—the illusion—of judicial review. When you look behind the words in the statute, you realize it is a mirage.

I also want to take a moment to address again an argument made yesterday by the Senator from Pennsylvania about the NSL provisions of the conference report. He argued that many of the complaints I have about the NSL provisions of the conference report apply equally to the NSL provisions of the Senate bill. And then he says because I supported the Senate bill, by some convoluted theory, my complaints are, therefore, invalid and I should support the conference report.

As I said yesterday, that does not make any sense.

The NSL section of the Senate bill was one of the worst sections of the bill. I did not like it then, and I do not like it now. But in the context of the larger package of reforms that was in the Senate bill, including the important changes to section 215 that I talked about earlier, and the new time limit on sneak-and-peek search warrants, which I will talk about in a moment, I was able to accept that the NSL section was there even though I would have preferred additional reforms.

The argument was made yesterday that after supporting a compromise package for its good parts, now I am supposed to accept a conference report that has the bad parts of the package even though the good parts have been taken out. Now, that is nonsense. Every Member of this Chamber who has ever agreed to a compromise—and I must assume that includes every one of us—knows it.

The other point I want to emphasize is that the Senate bill was passed before the Post reported that there has been extensive use of NSLs and the difficulties that the gag rule poses for businesses that feel they are being unfairly burdened by them, as reported by the Washington Post. At the very least, I would think that an NSL sunset is justified. But the conferees refused to make that change. Nor would they budge at all on the absurdly difficult standard of review, the so-called conclusive presumption.

I suspect that the NSL power is something the administration is zealously guarding because it is one area where there is almost no judicial involvement or oversight. It is the last refuge for those who want virtually unlimited Government power in intelligence investigations. And that is why the Congress should be very concerned and very insistent on making the reasonable changes we have suggested.

We had an interesting discussion on the floor yesterday also about the sneak-and-peek searches. This is another area where the conference report departs from the Senate's compromise language, and it is another reason I must oppose the conference report.

Yesterday, the Senator from Pennsylvania made what seems on the surface to be an appealing argument. He says the Senate bill requires notice of a sneak-and-peek search within 7 days of the search, and the House said 180 days.

The conference compromised on 30 days. ''That's a good result,'' he says. ''They came down 150 days, we went up only 23. What's wrong with that?''

Well, let me take a little time to put this issue in context and explain why this is not just a numbers game. An important constitutional right is at stake. One of the most fundamental protections in the Bill of Rights is the fourth amendment's guarantee that all citizens have the right to ''be secure in their persons, houses, papers, and effects'' against ''unreasonable searches and seizures.'' The idea that the Government cannot enter our homes improperly is actually a bedrock principle for Americans, and rightly so.

The fourth amendment has a rich history and includes in its ambit some very important requirements for searches. One is the requirement that a search be conducted pursuant to a warrant. The Constitution specifically requires that a warrant for a search be issued only when there is probable cause and that the warrant specifically describe the place to be searched and the persons or things to be seized.

Why does the Constitution require that particular description? For one thing, that description becomes a limit on what can be searched or what can be seized. If the magistrate approves a warrant to search someone's home, and the police show up at the person's business, that search is not valid. If the warrant authorizes a search at a particular address, and the police take it next door, they have no right to enter that house.

But, of course, there is no opportunity to point out that the warrant is inadequate unless that warrant is handed to someone on the premises. And if there is no one present to receive the warrant, and the search must be carried out immediately, most warrants require that they be left behind at the premises that were searched. Notice of the search—notice of the search—is part of the standard fourth amendment protection. Without the notice, it does not mean much. It is what gives meaning, or maybe we should say ''teeth,'' to the Constitution's requirement of a warrant and a particular description of the place to be searched and the persons or items to be seized.

Over the years, the courts have had to deal with Government claims that the circumstances of a particular investigation require a search without notifying the target prior to carrying out the search. In some cases, giving notice would compromise the success of the search by leading to the flight of the suspect or the destruction of evidence. The two leading cases on so-called surreptitious entry, which would come to be known as sneak-and-peek cases, came to very similar conclusions.

Notice of criminal search warrants could be delayed—delayed—but not omitted entirely. Both the Second Circuit in U.S. v. Villegas and the Ninth Circuit in U.S. v. Freitas held that a sneak-and-peek warrant must provide that notice of the search will be given within 7 days—7 days—unless extended by the court. Listen to what the Freitas court said about such searches:

> We take this position because surreptitious searches and seizures of intangibles strike at the very heart of the interests protected by the Fourth Amendment. The mere thought of strangers walking through and visually examining the center of our privacy interest, our home, arouses our passion for freedom as does nothing else. That passion, the true source of the Fourth Amendment, demands that surreptitious entries be closely circumscribed.

That is the end of the quote from that case.

So when defenders of the PATRIOT Act say that sneak-and-peek searches were commonly approved by the courts prior to the PATRIOT Act, they are partially correct. Some courts permitted secret searches in very limited circumstances, but they also recognized the need for prompt notice unless a reason to continue to delay was demonstrated. And they specifically said that notice had to occur within 7 days—7 days.

Section 213 of the PATRIOT Act did not get this part of the balance right. It allowed notice to be delayed for any reasonable length of time. Information

provided by the administration about the use of this provision indicates that delays of months at a time are now becoming commonplace. Now, those are hardly the kinds of delays that the courts had been allowing prior to the PATRIOT Act.

The sneak-and-peek power in the PATRIOT Act caused concern right from the start, and not just because of the lack of a time-limited notice requirement. The PATRIOT Act also broadened the justifications that the Government could give in order to obtain a sneak-and-peek warrant. It included what came to be known as the catch-all provision, which allows the Government to avoid giving notice of a search if it would ''seriously jeopardize an investigation.'' Some think that that justification in some ways swallows the requirement of notice since most investigators would prefer not to give notice of a search and can easily argue that giving notice will hurt the investigation.

The SAFE Act, the bipartisan bill that many of us worked on, worked to fix both of these problems. First, it tightened the standard for justifying a sneak-and-peek search to a limited set of circumstances—when advanced notice would endanger life or property, or result in flight from prosecution, the intimidation of witnesses, or the destruction of evidence. Second, it required notice within 7 days, with an unlimited number of 21-day extensions if approved by the court.

The Senate bill was a compromise from this. It kept the catch-all provision as a justification for obtaining a sneak-and-peek warrant. Those of us who were concerned about that provision agreed to accept it in return for keeping, and actually getting back, in my view, from the court cases, the 7-day notice requirement. And we accepted unlimited extensions of up to 90 days at a time. The key thing was prompt notice after the fact, or a court order that continuing to delay notice was justified.

That is actually the background of the numbers game that the Senator from Pennsylvania and other supporters of the conference report point to. They want credit for walking the House back from its outrageous position of 180 days, but they refuse to recognize that the sneak-and-peek provision still has the catch-all justification, and unlimited 90-day extensions. And here is the crucial question they refuse to answer: What possible rationale is there for not requiring the Government to go back to a court after 7 days and demonstrate a need for continued secrecy? Why insist that the Government get 30 days free without getting an extension? Could it be that they think the courts usually won't agree that continued secrecy is needed after the search is conducted, so they would not get the 90-day extension? If they have to go back to a court at some point, why not go back after 7 days rather than 30? From the point of view of the Government, I don't see the big deal. But from the point of view of someone whose house has been secretly searched, there is a big difference between notice after 1 week and notice after a month.

Suppose, for example, that the Government actually searched the wrong house, as I mentioned. That is one of the reasons that notice is a fourth amendment requirement. The innocent owner of the place that had been searched might suspect that somebody had broken in. They might be living in fear that someone has a key or some other way to enter. Should we make that person wait a month to get an explanation rather than a week? Presumably, if the search revealed nothing, and especially if the Government realized the mistake and does not intend to apply for an extension, it surely will be no hardship, other than perhaps embarrassment, for notice to be given within 7 days.

All of this is about why I am not persuaded by the numbers game on the sneak-and-peak provisions. The Senate bill was already a compromise on this very controversial provision. There is no good reason not to adopt the Senate's provision. No one has come forward and explained why the Government can't come back to the court within 7 days of executing the search. In fact, on a discussion of this last night on one of the television programs, one of my colleagues literally said, 7 days versus 30 days, what is the big deal? That is the strength of the argument. There is no merit to the idea of making the notice be as potentially late as 30 days.

Let me put it this way: If the House had passed a provision that allowed notice to be delayed for 1,000 days, would anyone be boasting about a compromise that requires notice within 100 days, more than 3 months? Would that be a persuasive argument? I don't think so. The House provision of 180 days was arguably worse than current law, which required notice ''within a reasonable time,'' because it created a presumption that delaying notice for 180 days, 6 months, is reasonable. It was a bargaining ploy. The Senate version was what the courts had required prior to the PATRIOT Act. It was itself a compromise because it leaves in place the catchall provision for justifying a warrant in the first place. That is why I believe the conference report on the sneak-and-peak provision is inadequate and must be opposed.

Let me make one final point about sneak-and-peak warrants. Don't be fooled for a minute into believing that this power is needed to investigate terrorism or espionage. It is not. Section 213 is a criminal provision that could apply in whatever kind of criminal investigation the Government has undertaken. In fact, most sneak-and-peak warrants are issued for drug investigations. So why do I say they are not needed in terrorism investigations? Because FISA also can apply to those investigations and FISA search warrants are always executed in secret and never require notice. If you really don't want to give notice of a search in a terrorism investigation, you can get a FISA warrant. So any argument that limiting the sneak-and-peak power, as we have proposed, will interfere with sensitive terrorism investigations is also a red herring.

I have spoken at length about the provisions of this conference report that trouble me. But to be fair, I should mention one significant improvement to the conference report over last month's draft. This new version does include a 4-year sunset on three of the most controversial provisions: Roving wiretaps, the so-called library provision which I discussed at some length, and the ''lone wolf'' provision of the Foreign Intelligence Surveillance Act. Previously, the sunsets on these provisions were at 7 years. It certainly is an improvement to have reduced that number so the Congress can take another look at these provisions or can take a look at these provisions sooner.

I also acknowledge that the conference report creates new reporting requirements for some PATRIOT Act powers, including new reporting on roving wiretaps, section 215 sneak-and-peak search warrants, and national security letters. There are also new requirements that the Inspector General of the Department of Justice conduct audits of the Government's use of national security letters and section 215.

In addition, the conference report includes other useful oversight provisions relating to FISA. It requires that Congress be informed about FISA court rules and procedures and about the use of emergency authorities under FISA. And it gives the Senate Judiciary Committee access to certain FISA reporting that currently only goes to the Intelligence Committee. I am glad to see that it requires the Department of Justice to report to us on its data-mining activities.

But adding sunsets and new reporting and oversight requirements only gets us so far. The conference report remains deeply flawed. I appreciate sunsets and reporting. I know that the senior Senator from Pennsylvania worked hard to ensure that they were included. But these improvements are not enough. Sunsetting bad law for another 4 years is not good enough. Simply requiring reporting on the Government's use of these overly expansive tools does not ensure that they won't be abused. We must make substantive changes to the law, not just improve oversight. This is our chance. We cannot let it pass by.

Last Thursday, after the conference deal was announced, the Attorney General termed it a ''win for the American people in that it would result in continued security for the United States and also continued protection of civil liberties for all Americans.'' In a way,

that comment shows that we have made some progress. The administration seems to understand now that protecting civil liberties is pretty important to our citizens. That is quite an improvement from the days when people who expressed these concerns were termed hysterical. But the Attorney General also said: ''people have seen how the Department of Justice has been very responsible in exercising [its] authorities.'' This comment reflects a fundamental misunderstanding of the relationship of the Government and the governed in our democracy. Trust of Government cannot be demanded or asserted or assumed. It must be earned. This Government has not earned our trust. It has fought reasonable safeguards for constitutional freedoms every step of the way. It has resisted congressional oversight and often misled the public about its use of the PATRIOT Act. And now the Attorney General is arguing that the conference report is adequate protection for civil liberties for all Americans? It isn't.

We sunsetted 16 provisions of the original PATRIOT Act precisely so we could revisit them and make necessary changes, to make improvements based on the experience of 4 years with the act, and with the careful deliberation and debate that, quite frankly, was missing 4 years ago. This process of reauthorization has certainly generated debate. But if we pass this conference report as currently written, we will have wasted a lot of time, and we will have missed an opportunity to finally get it right. The American people will not be happy with us for missing that chance. They will not accept our explanation that we decided to wait another 4 years before addressing their concerns. They will not settle for half a loaf because we ran out of time to reach consensus.

I submit that an acceptable consensus was reached unanimously by this Senate, every one of us, back in July. We should insist that the House pass that bill and give the American people a reauthorization bill that is worthy of their support and their confidence. I am prepared to keep fighting for as long as it takes to make that happen.

I thank the Chair and yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I would like to share some thoughts about the PATRIOT Act and its importance to the security of this country, its reasonableness, the careful way in which it has been crafted and adopted, the full debate to which it has been subjected, and I urge our colleagues not to allow this bill to expire, not to allow the wall to return so that our foreign intelligence agencies cannot share with our domestic intelligence agencies information that may be directly relevant to an attack on the people of the United States. That is exactly what was taking place on 9/11. It is precisely why we have had a failure to share important information. And many people believe that the PATRIOT Act possibly could have prevented the 9/11 attacks. It is easy to contemplate situations where other information not shared could have resulted in the lives of Americans being placed at risk or being lost. That is why we passed this bill.

We have had a full debate about it. This past reauthorization came out of the Senate Judiciary Committee 18 to 0. Senator FEINGOLD supported it. It came out of the Senate floor by unanimous consent. It went to a conference committee with the House. They had some different provisions in their version, as they always do, and the conference committee hammered out the differences. As Senator SPECTER, a civil libertarian himself, and chairman of the Judiciary Committee, who was involved in that process said, about 80 percent of what was disputed was decided in favor of the Senate bill. Now we are faced with a filibuster, an effort to block an up-or-down vote on the PATRIOT Act. It is really an extraordinary thing. In fact, some of the provisions put in by the conference committee strengthened the bill, from a civil liberties point of view, more than the Senate bill that left this body.

I want to just say, first of all, that the provisions in the PATRIOT Act are in no way extreme, in no way novel, in no way contradictory to the principles of the constitutional law this country has operated under since its founding. I mean that very sincerely. I would say that everything here, in any fundamental way that results in a method by which law enforcement can investigate terrorist activity—those procedures, those techniques, those abilities are clarified in this bill. These are standards that they must comply with, and that have been approved by the Supreme Court of the United States.

I remember at one of the hearings I asked witnesses this question: Do you think any of the provisions in this act are going to be found to be unconstitutional by the Supreme Court as required to protect our liberties and enforce the constitutional protections that we as Americans have been given? Every one of them said no. They said that because there is nothing in here that is going to be found unconstitutional. All of these principles and techniques that are provided with clarity, and standards in this act are consistent with what we have already approved in America. But we find that many of the investigatory techniques available to an IRS agent who is investigating somebody for a nonviolent crime involving taxes, or a drug enforcement agent that may be investigating someone for cocaine or marijuana, and many of those procedures that have been approved under the Constitution by the Supreme Court, are not available to investigators investigating terrorists who would kill us.

Everybody knows that it is a different matter when dealing with international entities, people who operate outside the laws of our country, who represent foreign powers, who represent international terrorist groups or other groups that are hostile to the interests of the United States. We have always understood that there are spies and we need a counterspy system in our country which will protect our Nation from those who would destroy it. We have always had principles that deal with that. For example, there have been complaints about the national security letters and section 215. Many of these complaints and those who oppose these provisions worry and suggest that something in the PATRIOT Act is novel, unusual, or unprecedented. But it is not so. I think we have had people who are utterly misinformed or sometimes maybe even deliberately failing to accurately articulate what is important and what is correct.

The national security letters that have been referred to by some of those who oppose this legislation were not created by the PATRIOT Act of 2001. This tactic, this procedure has been available since the 1980's. All the original PATRIOT Act did was add credit reports to the list of things you could get with a national security letter during the course of an investigation involving terrorism. Sometimes you might need a credit report to determine something about an individual, like where he is moving his money, and that kind of thing. That is all that was really added with regard to national security letters. Use of national security letters is limited to six very specific items: telephone toll records, bank records, credit reports, and things of that nature. These are all things that a drug enforcement agent can get with an administrative subpoena this very day to investigate someone for a drug crime.

Yet we don't have similar provisions for the FBI agent who is investigating a terrorist? What kind of idiotic principle of investigation is that? So the bill allows us to do that with national security letters. It has been the law for some time—over 20 years. So we added to the original PATRIOT Act the ability to use a national security letter to get credit reporting records of suspected terrorists—a big change that won't be used much. The conference report more than adequately addresses concerns about the national security letters by setting an extremely high requirement for nondisclosure.

Under the report, in order for the recipient to be precluded from telling others that they received a national security letter, a high Government official must certify that doing so would

''endanger the national security of the United States or interfere with diplomatic relations.'' That is an extremely high standard. In fact, I think it is too high. I think that in a terrorist or national security case, the disclosure is not such an important principle that needs this type of protection.

In my view, the standard of certification is high because we may not always be able to make such certification. An investigator may not be able to certify to every one of those things and therefore may be denied the right to obtain a record and not have the business notify the person about it.

By the way, I will repeat, we are talking about obtaining by national security letter from a third party, records that belong to the third party, not to the defendant or terrorist. You are not going into their house or their automobile or their desk in order to obtain their personal records. These are records being held at a bank, records to which everybody in the bank has access. These records are being held at a telephone company, and show the telephone toll records that you get on your monthly statements.

They are not in your control. They are in the telephone company's control. What used to happen was people would subpoena the toll records and ask the telephone company not to tell the customer, if it was a sensitive investigation. That has been done by every district attorney in America. They issue thousands of these subpoenas. Tens of thousands, I suggest, literally every month are issued for bank records, toll records every day. You have some expectation of privacy, but you don't have an expectation that those records will be secretly maintained by the bank or the telephone company when they are requested by a law enforcement officer for a law enforcement purpose, and relevant to an ongoing criminal investigation. That is the law, and it has been that way forever.

So now, when asking for these records during the course of an investigation into terrorism, we have to certify that if the recipient discloses to the terrorist that we are investigating their records, it would endanger the national security of the United States or interfere with diplomatic relations. Those are extremely high standards.

I know my colleague—and I respect him—Senator FEINGOLD voted for the less restrictive certification requirements that unanimously passed the Senate Judiciary Committee. He was one of the 18 who voted for it. I don't understand an objection now to the conference report that has a higher certification standard. The conference report makes clear that a recipient of an NSL, such as a bank, can consult with their attorney about the NSL without worrying that the consultation would be an unlawful disclosure. The conference report makes clear that the bank can also file a motion to quash the NSL if it does not want to give the government the information requested, and it makes it clear that the bank could ask the court to quash the nondisclosure requirement and allow them to share that information with the customer. So really, the provisions in this conference report only improve the situation from the perspective of civil libertarians, if we reject the conference report these extra protections will not become law.

Let's be frank about this. I am telling you how it works in the real world. I have been there. The banks simply want to be protected. If it is lawful for them to turn over the documents they have on a customer to a law enforcement agency without notifying their customers, they are perfectly willing to do so. But if they are told that in the law, their lawyers are now telling them to protect themselves by notifying customers that they gave their records, and they routinely do so to protect themselves today. They didn't used to do that 25 years ago, but it is because of the threat of being sued that they do that routinely now.

So it is critical that they not disclose because when you are looking at a terrorist organization, a cell that may be plotting to bomb someone but you are not sure who is in it and what it is about, and you are trying to find out about it, maybe you want their bank records, maybe you want motel records, maybe you want telephone toll records. They can provide incredibly valuable information to an investigator. This can prove whether the person being investigated is connected to terrorists. If you get their toll records and there are 25 phone calls to Yemen to somebody who has been identified by foreign intelligence as being connected to al-Qaida, then you have something. So that is very important. You may not be prepared at that moment to arrest the person. There may not be enough evidence to arrest them, but now you have a series of phone calls from a person who is a suspect in some city or State in this country calling a known terrorist in some other part of the world. You want to proceed with this investigation, but you don't want them to know you are on to them.

That is so basic. Talk to investigators. This is what it is all about. It is not academic. This is life and death. We can't ask too much of our investigators. We can not tie their hands by demanding they prove these things beyond a reasonable doubt, and certify all these facts that they are looking for as true before they do an investigation.

How do you get the facts? How do you get them? You have to gather the facts. But if we are not able to gather the facts in a terrorism prosecution with reasonable investigative tools, then how can we ever investigate a case and make a good case?

I feel strongly that this is an incredibly important provision and, in fact, is more civil liberties protective now as it has come out of conference than it was when it went to conference.

With regard to several other matters, I find the debate to be out of sync with reality.

Let's talk about the delayed notice search warrants, the so-called sneak and peek. This provisions is dealing with an everyday, regular search warrant. These are the type of warrants you need a court to approve if you are going to search someone's private house or office. This is not the same as going to the bank and getting a record on third parties. This is a search warrant to get somebody's own property. You can't take that property without a search warrant approved by a judge, and if it is a Federal case, such as a terrorist case, it will be a Federal judge. To get that warrant, you must prove to that Federal judge through an affidavit by real witnesses that there is probable cause to believe that person possesses evidence relevant to an important criminal investigation.

Senator FEINGOLD is correct, when you get a warrant approved on probable cause and then conduct the search, you should do it and give the return on the warrant to the individual whose property has been searched. If for some reason they are not there, you usually tack it on the door so they will know you have come, and that is the traditional way search warrants are done.

In the course of these kinds of investigations, I have had the personal experience on rare occasion to seek delayed notification, and I have heard of it on other occasions, I have read about situations where delayed notice is needed. Courts have approved through the common law process search warrants which they approve delaying notification to the person being searched. There can be many reasons, as one can imagine, why this delayed notice could be good. It had been done for a long time, long before the PATRIOT Act was passed. The U.S. Supreme Court has approved the procedure for delaying notice of a search.

All the delayed notification language does in the PATRIOT Act is set forth standards about how delayed notice procedure should be done.

The Senate bill, when it came out of our committee and voted on the floor, said you have to either to notify the defendant in 7 days that you did the search or come back to the judge within 7 days and ask the judge for more time before you notify them and set forth a reason for needing more time.

The House passed bill said you could delay notification for up to 180 days before you had to go back to the judge and ask for more time as a reason to delay the notification. Maybe you have gone in there and found they are putting material together to make a bomb, or you may find information that bad guys are coming into town and you need to wait on them, those kinds of things might justify further delaying notification. There may be a very delicate investigation of the most critical national importance. That is

why delayed notice has been around for decades and that is why the PATRIOT Act sought to provide a national standard for delayed notice.

So, the House was at 180 days, and the Senate was at 7 days, and we had a conference. We reached an agreement on 30 days. Well, you would think this is the end of the world if you believed some of my colleagues. If you are going to have delayed notification, how long should it be? Seven days is not a disaster for an investigator, although it is pretty tight deadline that could cause a good bit of problem. Thirty is much healthier, in my view. But whether it is 20 days, 40 days, whatever, this search has to be approved by a judge before it can be conducted. And if the defendant is not notified immediately, then they have to go back and establish to the court through evidence and proof that the delay should continue beyond the time period set.

It is not a big deal. To suggest that 7 days or 30 days is a difference that invokes some sort of huge constitutional principle that we should block this bill over and not even give it an up-or-down vote because of is beyond my comprehension. It is not a critical difference to our liberties whether it is 7 or 30 days. Some might have a different opinion. We had to reach a compromise. We rejected the 180 days. We took the 30 days, which is a lot closer to 7 than 180. In my view, the Senate already won on this issue.

There are a lot of other issues of the same import. I believe we have gone beyond the pale in criticizing this bill. It has been in effect for 4 years. None of it has been found to be unconstitutional. It is now going to be extended. It is already being curtailed by this conference report in a number of different ways to make the act even more friendly to civil liberties than it was when we first passed it. Nothing in the first bill, frankly, represented any reduction in any of our liberties, the claim that it did is simply untrue. This conference report has the full support of Chairman SPECTER and former Chairman HATCH. Senator LEAHY voted for the reauthorization bill before. He voted for it in committee and then did not object to it moving by unanimous consent off the floor this year in the Senate.

So now we have some that are making objections to some of the modest changes that were made in conference. I, frankly, think these changes were very minor. Our colleagues should not do that. To jeopardize the continuation of the tremendously valuable principles of the PATRIOT Act by filibustering this bill—and it will extinguish, critical parts of it will end soon if we do not break this filibuster and pass the reauthorization this week—is unthinkable to me. So I encourage my colleagues, please do not get upset about the conference report by believing the misinformation that is out there, please read and think carefully about what is in this bill. If they do so, they will find that all the provisions in it are consistent with sound constitutional law. All of these actions and provisions will be affirmed by the Supreme Court, many of them already have been, and it will be a tremendous advantage to our investigators who are working their hearts out this very day, this night, some places in this country today, investigating those who would do us harm.

I will probably share some more thoughts on some of the other provisions tomorrow but at this time would yield the floor and in a moment would, on behalf of the majority leader, do a wrap-up before we conclude. So therefore I will not put us in a quorum call at this time.

REPORTING ON THE DEPLOYMENT OF U.S. FORCES

Mr. STEVENS. Mr. President, I rise today to submit for the RECORD the President's consolidated report on the deployment of U.S. Armed Forces to operations around the world.

This report is provided for the information of all Senators and covers operations in support of the war on terror, Kosovo, and Bosnia and Herzegovina.

This report is submitted by the President, consistent with the war Powers Resolution, and addresses the circumstances under which hostilities were initiated, the scope and duration of such hostilities, and the constitutional and legislative authority under which the introduction of hostilities took place.

I encourage all of my colleagues to review this important report.

I ask unanimous consent to have the President's consolidated report printed in the RECORD.

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

DECEMBER 7, 2005.

Hon. TED STEVENS,
President pro tempore of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: I am providing this supplemental consolidated report, prepared by my Administration and consistent with the War Powers Resolution (Public Law 93–148), as part of my efforts to keep the Congress informed about deployments of U.S. combat-equipped armed forces around the world. This supplemental report covers operations in support of the war on terror, Kosovo, and Bosnia and Herzegovina.

THE WAR ON TERROR

Since September 24, 2001, I have reported, consistent with Public Law 107–40 and the War Powers Resolution, on the combat operations in Afghanistan against al-Qaida terrorists and their Taliban supporters, which began on October 7, 2001, and the deployment of various combat-equipped and combat-support forces to a number of locations in the Central, Pacific, and Southern Command areas of operation in support of those operations and of other operations in our war on terror.

I will direct additional measures as necessary in the exercise of the right of the United States to self-defense and to protect U.S. citizens and interests. Such measures may include short-notice deployments of special operations and other forces for sensitive operations in various locations throughout the world. It is not possible to know at this time either the precise scope or duration of the deployment of U.S. Armed Forces necessary to counter the terrorist threat to the United States.

United States Armed Forces, with the assistance of numerous coalition partners, continue to conduct the U.S. campaign to pursue al-Qaida terrorists and to eliminate support to al-Qaida. These operations have been successful in seriously degrading al-Qaida's training capabilities. United States Armed Forces, with the assistance of numerous coalition partners, ended the Taliban regime and are actively pursuing and engaging remnant al-Qaida and Taliban fighters in Afghanistan. Approximately 280 U.S. personnel are also assigned to the International Security Assistance Force (ISAF) in Afghanistan. The U.N. Security Council authorized the ISAF in U.N. Security Council Resolution 1386 of December 20, 2001, and has reaffirmed its authorization since that time, most recently, for a 12-month period from October 13, 2005, in U.N. Security Council Resolution 1623 of September 13, 2005. The mission of the ISAF under NATO command is to assist the Government of Afghanistan in creating a safe and secure environment that allows reconstruction and the reestablishment of Afghan authorities. Currently, all 26 NATO nations contribute to the ISAF. Ten non-NATO contributing countries also participate by providing military and other support personnel to the ISAF.

The United States continues to detain several hundred al-Qaida and Taliban fighters who are believed to pose a continuing threat to the United States and its interests. The combat-equipped and combat-support forces deployed to Naval Base, Guantanamo Bay, Cuba, in the U.S. Southern Command area of operations since January 2002 continue to conduct secure detention operations for the approximately 500 enemy combatants at Guantanamo Bay.

The U.N. Security Council authorized a Multinational Force (MNF) in Iraq under unified command in U.N. Security Council Resolution 1511 of October 16, 2003, and reaffirmed its authorization in U.N. Security Council Resolution 1546 of June 8, 2004. In U.N. Security Council Resolution 1637 of November 8, 2005, the Security Council, noting the Iraqi Government's request to retain the presence of the MNF, extended the MNF mandate for a period ending on December 31, 2006. Under Resolutions 1546 and 1637, the mission of the MNF is to contribute to security and stability in Iraq, as reconstruction continues, until the completion of Iraq's political transformation. These contributions have included assisting in building the capability of the Iraqi security forces and institutions, as the Iraqi people, represented by the Transitional National Assembly, drafted and approved a constitution and progressed toward the establishment of a constitutionally elected government. The U.S. contribution to the MNF is approximately 160,000 military personnel.

In furtherance of our efforts against terrorists who pose a continuing and imminent threat to the United States, our friends and allies, and our forces abroad, the United States continues to work with friends and allies in areas around the globe. United States combat-equipped and combat-support forces are located in the Horn of Africa region, and the U.S. forces headquarters element in Djibouti provides command and control support as necessary for military operations against al-Qaida and other international terrorists in the Horn of Africa region, including Yemen. These forces also assist in enhancing counterterrorism capabilities in