

to release the alien into the public. We have all heard the deplorable stories of some of the horrific acts committed by deportable aliens who were released into the United States after they were not removed from the country within the 6-month limit. This amendment would allow the Government to keep these aliens in custody until they can be removed and prevent them from harming American citizens.

I want to close by thanking my colleague from Texas for the work he has done on this amendment and his effort in making our country safer. This is what the American people want, expect, and deserve. This is the right thing to do, and I urge my colleagues to support this amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The junior Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, I appreciate my colleague, Senator CHAMBLISS from Georgia, and his excellent remarks. I stand today shoulder to shoulder with him in endorsing Senator CORNYN in what he has brought forward to the Senate. Notwithstanding one's position on the debate of the last 3 days, I think it is ironic that we spent the last 72 hours debating whether we should give collective bargaining rights to TSA employees after we debated this 5 years ago and decided not to do that and after having spent very little time talking about 9/11 and the security of the United States of America.

What Senator CORNYN has done is taken the ideas of Senator KYL, Senator GRASSLEY, Senator CORNYN, and others and brought forward meaningful amendments that ought to be on a 9/11 bill. I sincerely hope that my colleagues, when the cloture vote comes forward tomorrow, will vote to invoke cloture so we can bring these amendments to the floor and have a meaningful addition to the 9/11 bill.

I wish to talk about three of these amendments for just a second and talk about why they are so important.

No. 1 is on recruiting. It is always good when you can tell a real life story and not just a hypothetical. About a year ago, in my hometown of Atlanta, GA, there was an announcement by the U.S. Secret Service, the CIA, and international intelligence agencies that two young men at Georgia Tech—the Georgia Institute of Technology—had been taken into custody under suspicion of terrorism. As it turns out, both of these two young men, using the library computers at Georgia Tech, were in a terrorist cell that was born in Pakistan, organized in Toronto, and was recruiting in Atlanta, GA.

Now, not because we overlooked it but because nobody ever thought about it, we have never had a statute to punish someone for recruiting terrorism. So right in my own home State of Georgia, right in my own hometown, two 21-year-old students at Georgia Tech were recruited and, fortunately,

caught and, fortunately—because of the PATRIOT Act, I might add—intercepted because of the watching and the maintenance of those computers. But this was a terrorist cell, and these individuals were recruited. There is no punishment for recruiting those folks.

Al-Qaida has demonstrated and the 9/11 Commission told us that recruitment is the main source or resource of human beings for suicide bombers, for airplane hijackers, and others who would carry out the acts of al-Qaida. So, first of all, Senator CORNYN bringing this forward is absolutely appropriate.

Secondly, and briefly, Senator GRASSLEY's amendment with regard to the reviewability of the revocation of a visa is included in this package. Paint this picture for a second: All 19 of the hijackers on 9/11 got into the United States in a legal way. Most of them had overstayed their visas. But just think for a second. Had they been caught, had they been suspected of a terrorist act when they were about to commit it, and had their visa been revoked, they would have had the right to stay in this country and judicially appeal that revocation, which meant they could have stayed here even after being identified and quite possibly still carried out a terrorist attack.

To let you know how important this amendment is, I have an interesting fact for everybody to take in and digest for just a second. In 1986, when we reformed immigration in this country, we granted amnesty and created a number of legal citizens and legal visas in the United States. We also created a mechanism for judicial review. There are still two cases from the 1986 Immigration Reform Act under judicial review 21 years later. Those individuals still remain in the United States of America.

If we capture somebody for suspected terrorism and, under the disciplines we use, revoke that visa, it only stands to reason that they should not be reviewable and should be returned to the country from which they came.

Otherwise, we would be knowingly and willingly harboring someone we suspect would cause harm to the United States of America and commit a terrorist act.

Mr. President, I appreciate the time that has been afforded me. I stand in full support of the Cornyn amendment and in a sincere hope that my colleagues will vote for the motion to invoke cloture and pass this very important amendment for the safety and security of the United States of America and its people.

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

The PRESIDING OFFICER (Mr. OBAMA). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Illinois is recognized.

Mr. DURBIN. I thank the Chair.

(The remarks of Mr. DURBIN pertaining to the introduction of S. 831 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DURBIN. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### IMPROVING AMERICA'S SECURITY ACT OF 2007—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 4, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 4) to make the United States more secure by implementing unfinished recommendations of the 9/11 Commission to fight the war on terror more effectively, to improve homeland security, and for other purposes.

Pending:

Reid amendment No. 275, in the nature of a substitute.

Sununu amendment No. 291 (to amendment No. 275), to ensure that the emergency communications and interoperability communications grant program does not exclude Internet Protocol-based interoperable solutions.

Salazar/Lieberman modified amendment No. 290 (to amendment No. 275), to require a quadrennial homeland security review.

Dorgan/Conrad amendment No. 313 (to amendment No. 275), to require a report to Congress on the hunt for Osama bin Laden, Ayman al-Zawahiri, and the leadership of al-Qaida.

Landrieu amendment No. 321 (to amendment No. 275), to require the Secretary of Homeland Security to include levees in the list of critical infrastructure sectors.

Landrieu amendment No. 296 (to amendment No. 275), to permit the cancellation of certain loans under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Landrieu modified amendment No. 295 (to amendment No. 275), to provide adequate funding for local governments harmed by Hurricane Katrina of 2005 or Hurricane Rita of 2005.

Allard amendment No. 272 (to amendment No. 275), to prevent the fraudulent use of social security account numbers by allowing the sharing of social security data among agencies of the United States for identity theft prevention and immigration enforcement purposes.

McConnell (for Sessions) amendment No. 305 (to amendment No. 275), to clarify the

voluntary inherent authority of States to assist in the enforcement of the immigration laws of the United States and to require the Secretary of Homeland Security to provide information related to aliens found to have violated certain immigration laws to the National Crime Information Center.

McConnell (for Cornyn) amendment No. 310 (to amendment No. 275), to strengthen the Federal Government's ability to detain dangerous criminal aliens, including murderers, rapists, and child molesters, until they can be removed from the United States.

McConnell (for Cornyn) amendment No. 311 (to amendment No. 275), to provide for immigration injunction reform.

McConnell (for Cornyn) modified amendment No. 312 (to amendment No. 275), to prohibit the recruitment of persons to participate in terrorism, to clarify that the revocation of an alien's visa or other documentation is not subject to judicial review, to strengthen the Federal Government's ability to detain dangerous criminal aliens, including murderers, rapists, and child molesters, until they can be removed from the United States, to prohibit the rewarding of suicide bombings and allow adequate punishments for terrorist murders, kidnappings, and sexual assaults.

McConnell (for Kyl) modified amendment No. 317 (to amendment No. 275), to prohibit the rewarding of suicide bombings and allow adequate punishments for terrorist murders, kidnappings, and sexual assaults.

McConnell (for Kyl) amendment No. 318 (to amendment No. 275), to protect classified information.

McConnell (for Kyl) amendment No. 319 (to amendment No. 275), to provide for relief from (a)(3)(B) immigration bars from the Hmong and other groups who do not pose a threat to the United States, to designate the Taliban as a terrorist organization for immigration purposes.

McConnell (for Kyl) amendment No. 320 (to amendment No. 275), to improve the Classified Information Procedures Act.

McConnell (for Grassley) amendment No. 300 (to amendment No. 275), to clarify the revocation of an alien's visa or other documentation is not subject to judicial review.

McConnell (for Grassley) amendment No. 309 (to amendment No. 275), to improve the prohibitions on money laundering.

Thune amendment No. 308 (to amendment No. 275), to expand and improve the Proliferation Security Initiative while protecting the national security interests of the United States.

Cardin amendment No. 326 (to amendment No. 275), to provide for a study of modification of area of jurisdiction of Office of National Capital Region Coordination.

Cardin amendment No. 327 (to amendment No. 275), to reform mutual aid agreements for the National Capital Region.

Cardin modified amendment No. 328 (to amendment No. 275), to require Amtrak contracts and leases involving the State of Maryland to be governed by the laws of the District of Columbia.

Schumer/Clinton amendment No. 336 (to amendment No. 275), to prohibit the use of the peer review process in determining the allocation of funds among metropolitan areas applying for grants under the Urban Area Security Initiative.

Schumer/Clinton amendment No. 337 (to amendment No. 275), to provide for the use of funds in any grant under the Homeland Security Grant Program for personnel costs.

Coburn amendment No. 325 (to amendment No. 275), to ensure the fiscal integrity of grants awarded by the Department of Homeland Security.

Sessions amendment No. 347 (to amendment No. 275), to express the sense of the

Congress regarding the funding of Senate approved construction of fencing and vehicle barriers along the southwest border of the United States.

Coburn amendment No. 301 (to amendment No. 275), to prohibit grant recipients under grant programs administered by the Department from expending funds until the Secretary has reported to Congress that risk assessments of all programs and activities have been performed and completed, improper payments have been estimated, and corrective action plans have been developed and reported as required under the Improper Payments Act of 2002 (31 U.S.C. 3321 note).

Coburn amendment No. 294 (to amendment No. 275), to provide that the provisions of the act shall cease to have any force or effect on and after December 31, 2012, to ensure congressional review and oversight of the Act.

Lieberman (for Menendez) amendment No. 354 (to amendment No. 275), to improve the security of cargo containers destined for the United States.

Specter amendment No. 286 (to amendment No. 275), to restore habeas corpus for those detained by the United States.

Kyl modified amendment No. 357 (to amendment No. 275), to amend the data-mining technology reporting requirement to avoid revealing existing patents, trade secrets, and confidential business processes, and to adopt a narrower definition of data-mining in order to exclude routine computer searches.

Ensign amendment No. 363 (to amendment No. 275), to establish a Law Enforcement Assistance Force in the Department of Homeland Security to facilitate the contributions of retired law enforcement officers during major disasters.

Biden amendment No. 383 (to amendment No. 275), to require the Secretary of Homeland Security to develop regulations regarding the transportation of high hazard materials.

Biden amendment No. 384 (to amendment No. 275), to establish a Homeland Security and Neighborhood Safety Trust Fund and refocus Federal priorities toward securing the homeland.

Bunning amendment No. 334 (to amendment No. 275), to amend title 49, United States Code, to modify the authorities relating to Federal flight deck officers.

Schumer modified amendment No. 367 (to amendment No. 275), to require the Administrator of the Transportation Security Administration to establish and implement a program to provide additional safety measures for vehicles that carry high hazardous materials.

Schumer amendment No. 366 (to amendment No. 275), to restrict the authority of the Nuclear Regulatory Commission to issue a license authorizing the export to a recipient country of highly enriched uranium for medical isotope production.

Wyden amendment No. 348 (to amendment No. 275), to require that a redacted version of the Executive Summary of the Office of Inspector General Report on Central Intelligence Agency Accountability Regarding Findings and Conclusions of the Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, is made available to the public.

Bond/Rockefeller amendment No. 389 (to amendment No. 275), to provide the sense of the Senate that the Committee on Homeland Security and Governmental Affairs and the Select Committee on Intelligence of the Senate should submit a report on the recommendations of the 9/11 Commission with respect to intelligence reform and congressional intelligence oversight reform.

Stevens amendment No. 299 (to amendment No. 275), to authorize NTIA to borrow

against anticipated receipts of the Digital Television Transition and Public Safety Fund to initiate migration to a national IP-enabled emergency network capable of receiving and responding to all citizen activated emergency communications.

#### AMENDMENT NO. 291

Mr. LIEBERMAN. Mr. President, I now call for the regular order with regard to the Sununu amendment, No. 291.

The PRESIDING OFFICER. The amendment is now pending.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, that is where we will keep the Senate for some period of time as we hope people on both sides can reason together and come to some meeting of the minds that will allow us to complete work on the more than 50 amendments that are pending and in a state of suspended gridlock and, unfortunately, standing in the way of the adoption of the 9/11 bill that is before us.

I will repeat that this bill came out of our Homeland Security and Governmental Affairs Committee with a non-partisan vote—16 to nothing and 1 abstention. It has matters that are critically important to our national security and our homeland security. It would be a shame if its passage here and movement to conference with the House, which has already passed companion legislation, is held up because of the parliamentary and procedural gridlock the Senate is in now.

I hope my colleagues on both sides can, as I said, reason together to break that gridlock so we can complete work on the pending amendments and proceed to final passage of this legislation. Pending that, the Sununu amendment, No. 291, will remain the pending business.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, as the Chair knows, and Members of the Senate know, the Senate is unfortunately in gridlock at this moment on this important bill because of disagreements as to how to handle several of the amendments. The trouble is the essential bill that came out of our committee, on which the distinguished occupant of the chair is a member, is intact. It does a lot to support first responders at the local level, to increase information sharing within our Government to avoid the failure to connect the dots that preceded 9/11. It is full of very important unfinished business that came from the 9/11 Commission Report.

Unfortunately, in addition to the 50 amendments pending and the refusal of

some Senators to grant consent to go on to hold votes on amendments on which we actually have bipartisan agreement, yesterday the minority leader came to the floor, and in a unique action—it is not seen around here too much—filed a cloture motion on four amendments that were pending. That will now keep us, barring some break and agreement between our leaders, in this state of suspended animation until tomorrow when the vote is scheduled both on the cloture motion filed by the Republican leader and the one on the overall bill to bring us to a conclusion filed by Senator REID, the majority leader. What is very important is to focus us back on what this is all about and, hopefully, to shake us all up to remember that we are responding to, in this legislation, 5½ years after 9/11, the unfinished business of our Nation to protect our people from another terrorist attack.

Obviously, we are building on what we did in the 9/11 Commission legislation that passed in 2004, but there is more to do; we all agree. I am about to read a letter into the RECORD. I hope this letter will be read by every Member of the Senate and bring us back to what this is all about and honestly force us to reason together to get over this momentary gridlock to do what is important for our country.

The letter is addressed to the Republican leader, the Honorable MITCH MCCONNELL. It comes from a number of the leaders of groups established by family members of victims of 9/11: Carol Ashley, mother of Janice, 25, member of Voices Of September 11th; Mary Fetchet, mother of Brad, 24, founding director and president of Voices of September 11th; Beverly Eckert, widow of Sean Rooney, 50, member of Families of September 11; and Carie Lemack, daughter of Judy Larocque, 50, cofounder and president, Families of September 11. Obviously, the names I mentioned, the first names and ages, were among those who were killed by the terrorists on September 11. This is a letter from these four family members of September 11 to Senator MCCONNELL.

The letter reads as follows:

MARCH 8, 2007.

Hon. MITCH MCCONNELL,  
Minority Leader, U.S. Senate,  
Washington, DC.

DEAR SENATOR MCCONNELL: As family members who lost loved ones on 9/11, we support full implementation of the 9/11 Commission recommendations. We are writing out of grave concern that your recent introduction of highly provocative, irrelevant amendments will jeopardize the passage of S. 4. It is inconceivable that anyone in good conscience would consider hindering implementation of the 9/11 Commission recommendations and we strongly disagree with these divisive procedural tactics.

Just as the Iraq war deserves separate debate, so do each of the amendments you offered. S. 4 should be a clean bill and debate should conclude this week with a straight up and down vote. Each day that passes without implementation of the remaining 9/11 Commission recommendations, the safety and security of our nation is at risk.

Tactics such as those you are contemplating, aimed at endangering the 9/11 bill, sends a signal to America that partisan politics is alive and well under your leadership. Both parties must work together to pass this critical legislation. We, the undersigned, understand the risk of failure all too well.

Respectfully,

CAROL ASHLEY,  
Mother of Janice, 25,  
Member, VOICES of  
September 11th.

MARY FETCHET,  
Mother of Brad, 24,  
Founding director  
and President,  
Voices of September  
11th.

BEVERLY ECKERT,  
Widow of Sean Rooney,  
50, member,  
Families of Sep-  
tember 11.

CARIE LEMACK,  
Daughter of Judy  
Larocque, 50, Co-  
founder and Presi-  
dent, Families of  
September 11.

This letter should be read by every Member of the Senate, not only with regard to the cloture motion that was filed yesterday but, frankly, also to some of the normal posturing and game playing that is going on by different Members, blocking agreement and moving forward on the bill unless their particular amendment is agreed to.

It is time for us to wake up, focus on what is really important and get this bipartisan bill, S. 4, Improving America's Security Act, adopted as soon as possible.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, I thank the Chair. While the Senate awaits resolution on the parliamentary and, I suppose, political gridlock in which we find ourselves, I thought I would say a few words to remind my colleagues of the background that led to this particular legislation, S. 4, which, I repeat, came out of our Homeland Security Committee with a unanimous, nonpartisan vote of 16 to 0 and one abstention and is before us now.

I go back to August 21, 2004. On that day, the 9/11 Commission's official mandate as an independent, nonpartisan commission ended, 1 month after the release of their final report. But the 10 Commissioners, the 10 citizens who were members of the Commission and responsible for its extraordinary work—the findings, the recommendations, many of which we adopted in legislation that followed in 2004—the 10 Commissioners decided to stay active in the public debate over the Commission's recommendations that fall. They made a real contribu-

tion to continuing to remind us why adopting—certainly considering first and then adopting—their recommendations was so important. They testified before Congress during the latter half of 2004 and played a critical role in helping bring about the passage and enactment and the signature by the President of the Intelligence Reform and Terrorism Prevention Act of 2004.

The 10 Commissioners understood the importance of keeping the spotlight on the implementation of their recommendations. They concluded that without their persistent attention, there was a risk that we in Washington would lose focus on the difficult challenges that had been highlighted in the Commission's report and that we would go on to other work—not that, obviously, we would lose our care and concern about terrorism. So these 10 Commissioners formed the 9/11 Public Discourse Project, an independent nongovernmental group that held a number of meetings in 2005 to follow up on the implementation of the Commission's recommendations.

This group, the 9/11 Public Discourse Project, held a series of public meetings to which I have referred in 2005 to gauge progress on implementation of the legislation that resulted from their initial report. In the fall of 2005, later in the year, they issued a series of report cards on intelligence, homeland security, and foreign policy that graded the Federal Government on its implementation of their recommendations.

On December 5, 2005, these Commissioners, now joined together in what they called The Project, issued their final report summarizing their grades on the implementation of the 9/11 Commission's 41 recommendations. I can't say that I agreed with all their grades, but they were certainly sobering and should also have been motivating for all of us. The Project issued 1 A, 11 Bs, 9 Cs, 12 Ds, 5 Fs, and 2 incomplete grades. That calculates out to a C-minus average—not exactly the type of grades that would make us happy if our kids brought them home, and obviously the kinds of grades that should make us not only unhappy but agitated and anxious to raise them up when the grades deal with our national security, our homeland security.

The cochairs of the 9/11 Commission who went on to be cochairs of the 9/11 Public Discourse Project, former New Jersey Governor Thomas Kean and former member of the House of Representatives Lee Hamilton, vice-chair, issued a statement on the release of the report where they lamented the progress and its implementation. I quote from the Kean-Hamilton statement on December 5, 2005. They said:

We are safer—no terrorist attacks have occurred inside the United States since 9/11—but we are not as safe as we need to be.

I continue quoting:

We see some positive changes. But there is so much more to be done. Many obvious steps that the American people assume have

been completed have not been. Our leadership is distracted.

"There is so much more to be done," Chairman Kean and Vice Chairman Hamilton told the Nation that day at the end of 2005. That is why our Homeland Security Committee took up the call and why we reported out S. 4, which is before the Senate today.

Chairman Kean and Vice Chairman Hamilton went on in their remarks to discuss areas that had not been adequately addressed. They focused on interoperability for first responders around the country, effective screening of visitors to the U.S. against the terrorist watch list, homeland security grant allocations, and they bemoaned what they called "the lack of urgency about fixing these problems."

Their statement then continued:

Bin Laden and al-Qaida believe it is their duty to kill as many Americans as possible. This very day they are plotting to do us harm.

On 9/11 they killed nearly 3,000 of our fellow citizens. Many of the steps we recommend would help prevent such a disaster from happening again. We should not need another wake-up call.

I continue—this is all Kean and Hamilton:

We believe that the terrorists will strike again. If they do, and these reforms have not been implemented, what will our excuses be? While the terrorists are learning and adapting, our government is still moving at a crawl.

Tough words from Tom Kean and Lee Hamilton.

The terrorists are learning and adapting faster than ever. We saw evidence of that last August in the United Kingdom when a terrorist plot to blow up planes using liquid explosives—those planes heading toward the United States—was thankfully disrupted. We see evidence on the Internet today which terrorist groups are using increasingly to find new recruits, to develop new capabilities, to share information, and to propagandize about their latest exploits. They are moving, these terrorists, at a rapid pace. We not only must keep up with them, we must move ahead of them and move more rapidly than they are.

Chairman Kean and Vice Chairman Hamilton went on to discuss responsibility for addressing this challenge. They said:

The first purpose of government in the preamble of our Constitution is to "provide for the common defense." We have made clear time and again what we believe needs to be done to make our country safer and more secure: The responsibility for action and leadership rests with Congress and the President.

Of course, I agree, and I presume every Member of the Senate agrees, the responsibility rests with us and with the President. We have a choice to make as we debate this bill. We can bear the burden and responsibility of action and leadership and carry out the essential reforms that will strengthen our Nation's security or we can forego our responsibilities and take a chance with the homeland security of our

country and its people. That is a risk that I know no Member of this Chamber wants to take.

In the final chapter of their book, "Without Precedent"—that is the name of the book, "Without Precedent"—which recounted their experience leading the 9/11 Commission, Tom Kean and Lee Hamilton repeat this last statement and conclude with these powerful words:

We now call upon our elected leaders to come together again with that same sense of urgency and purpose. We call upon Republicans and Democrats to work together to make our country safer and more secure. The American people deserve no less.

That is from Tom Kean and Lee Hamilton. They are absolutely right. They deserve no less. The American people deserve no less.

So we have come together on our committee, and we are moving very rapidly on the Senate floor, beginning last Wednesday through this week. We have had some good, healthy debates, disagreements, but resolved with votes. The bill as it came out of our committee is in strong shape. It would be a tragedy if we let the procedural differences, the personal concerns about individual amendments, the inability to reason together to stop us from passing this bill and passing it urgently. I am confident that we will be able to do it, but the sooner the better.

I thank the Chair.

Mr. President, I yield the floor. I note the presence of my friend and colleague from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 813 and S. 814 are located in today's RECORD under "Statements on Introduced bills and Joint Resolutions.")

Mr. SPECTER. Mr. President, in the absence of any other Senator seeking recognition, 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. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LIEBERMAN. Mr. President, I note the presence on the floor of our colleague from Arizona. I yield the floor to him at this time.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, yesterday afternoon, our colleague Senator SPECTER criticized the decision of the U.S. Court of Appeals for the District of Columbia in the Al Odah v. U.S. case. That decision upheld the recently enacted Military Commission Act's bar on lawsuits brought by enemy combatants held at Guantanamo Bay.

Senator SPECTER argued that the Guantanamo detainees have a constitu-

tional right to bring these lawsuits, and he predicted that Al Odah will be overruled. He based his argument largely on the Supreme Court's 2004 decision in Rasul v. Bush. Senator SPECTER argued that Rasul's ruling that habeas extends to Guantanamo Bay was a constitutional ruling. Senator SPECTER based his argument on Rasul's discussion of the 18th century common law of habeas corpus. Senator SPECTER also argued that Justice Scalia's opinion in Rasul acknowledged that Rasul overruled Johnson v. Eisentrager, the landmark decision establishing that captured enemy combatants do not enjoy the privilege of litigation.

I will address each of Senator SPECTER's argument in turn. At the outset, however, I would like to note that last September, Senator SPECTER argued that a passage from the plurality opinion in the 2004 decision in Hamdi v. Rumsfeld established that all aliens held in the United States, regardless of combatant status, are constitutionally entitled to seek writs of habeas corpus. In response at that time, I argued that Hamdi did not effect such a radical result. I noted that the holding of Hamdi clearly only involved U.S. citizens; that the notion of extending habeas to aliens based on territorial distinctions was inconsistent with the logic of Hamdi; and that Senator SPECTER's reading of Hamdi was inconsistent with basic rules of construction that urge against reading groundbreaking new rules into obscure and ambiguous passages of opinions.

I am pleased to see that, today, Senator SPECTER has not renewed the argument that Hamdi extended habeas rights to noncitizen enemy soldiers. I will assume that he was persuaded by the force of the arguments that I made last September.

Today, allow me to try to persuade Senator SPECTER, and the rest of my colleagues, that the majority opinion in Rasul v. Bush does not require that the constitutional guarantee of habeas corpus be extended to alien enemy combatants who are being detained during wartime.

Section 7 of the Military Commissions Act, like its predecessor, the Detainee Treatment Act, is predicated on the continuing validity of Johnson v. Eisentrager's constitutional holding, on the unbroken common-law tradition of denying the privilege of litigation to captured alien enemy soldiers, and on the understanding that the holding in Rasul v. Bush was a statutory holding, not a constitutional one.

Neither Senator SPECTER, nor anyone else, has been able to cite a single case prior to Rasul v. Bush in which any English or American court has ever held that captured enemy soldiers who are not citizens are entitled to seek the writ of habeas corpus. Not one case can be cited that grants the writ to alien enemy soldiers. The absence of any such example over the centuries of the history of the writ of habeas corpus speaks volumes, and alone should be

conclusive of the constitutional question. Simply put, when the Constitution was adopted, the notion that the common law writ of habeas corpus could be employed by alien enemy soldiers was unheard of and it remained unheard until June of 2004, when the Supreme Court decided *Rasul v. Bush*.

Of course, with 5 votes, the *Rasul* Court could have grafted a habeas right for alien enemy combatants onto the Constitution. I believe that to do so would have been deeply irresponsible, and I believe that this is clearly not what the court did in *Rasul*.

In support of his interpretation of *Rasul*, Senator SPECTER argued that Justice Scalia's opinion in *Rasul* noted that the *Rasul* majority overruled *Eisentrager*, which had denied litigation rights to alien enemy combatants. In response, I would first note that Justice Scalia's opinion in *Rasul* was a dissenting opinion. As any lawyer knows, a dissenting opinion's characterization of a court's holding is hardly authoritative. An argument about what a case means that is based primarily on the dissent is inherently a weak argument.

Moreover, I do not think that Justice Scalia's dissenting opinion in *Rasul* is in any way inconsistent with the notion that *Eisentrager*'s constitutional holding remains good law, and that the constitutional right of habeas corpus does not extend to alien enemy soldiers. Justice Scalia makes clear in his dissent that he is accusing the majority only of overruling *Eisentrager*'s statutory holding, not its constitutional holding.

Justice Scalia begins at page 493 of his dissent by quoting the following passage from *Eisentrager*: "Nothing in the text of the Constitution extends such a right"—a right of habeas corpus for war prisoners held overseas—"nor does anything in our statutes." It is Justice Scalia who italicized the absence of a statutory right when quoting this passage. He then went on to note:

*Eisentrager*'s directly-on-point statutory holding makes it exceedingly difficult for the Court to reach the result it desires today. To do so neatly and cleanly, it must either argue that our decision in *Braden* overruled *Eisentrager*, or admit that it is overruling *Eisentrager*.

In this passage, Justice Scalia does accuse the *Rasul* majority of overruling *Eisentrager*, but he also makes clear that he only accuses it of overruling *Eisentrager*'s statutory holding, not its constitutional holding.

But the argument that *Rasul v. Bush*'s holding was only statutory, and did not extend constitutional rights to enemy combatants, is supported by more than just Justice Scalia's dissent. The majority opinion itself repeatedly and clearly indicates that the holding in that case is only statutory, not based on the Constitution. For example, on page 475 of the opinion, for example, the majority clearly states that "[t]he question now before us is whether the habeas statute confers a right to

judicial review" of the detention of the detainees at Guantanamo Bay. Thus the court was careful to make clear that it was the habeas statute that it was interpreting, not the Constitution.

On the next page, when distinguishing *Eisentrager*, the *Rasul* majority opinion states that "*Eisentrager* made quite clear that [its analysis was] relevant only to the question of the prisoner's constitutional entitlement to habeas corpus. The court had far less to say on the question of the petitioner's statutory right to habeas corpus."

Finally, at page 478, when explaining how it would distinguish the holding in *Eisentrager*, the majority stated: "Because subsequent decisions of this Court have filled the statutory gap that had occasioned *Eisentrager*'s resort to 'fundamentals,' persons detained outside the territorial jurisdiction of any federal district court no longer need rely on the Constitution as the source of their right to federal habeas review."

This statement could not be clearer that *Rasul* only addressed the petitioners' statutory right to habeas, not any constitutional right. The court stated that statutory changes—or rather, changes in the interpretation of statutes—made it unnecessary to reach any constitutional questions in *Rasul*.

Senator SPECTER's other main argument for his interpretation of *Rasul* is that the majority opinion's discussion of 18th century common law is a constitutionally binding interpretation of the scope of the writ. My response is that may be so, but it is not relevant to the constitutionality of the Military Commissions Act. The discussion in *Rasul* that Senator SPECTER cites is about how far the writ applies overseas. It is not about whether the writ applies to alien enemy soldiers.

*Rasul*'s discussion of the common law of habeas corpus appears in Part IV of the majority decision—after the court had already decided that the statutory right extended to the detainees at Guantanamo. This part of *Rasul* is devoted to responding to the argument that the presumption against extraterritorial application of legislation requires that the habeas statute be construed to not extend to Guantanamo Bay. Justice Stevens stated that "[w]hatever traction the presumption against extraterritoriality might have in other contexts, it certainly has no application to the operation of the habeas statute with respect to persons detained within 'the territorial jurisdiction' of the United States." Justice Stevens then asserted that at common law the writ applied to aliens held overseas, and he went on to describe common law cases that he characterized as extending the writ to aliens held at places outside of the "sovereign territory of the realm."

Whatever the merits of Justice Stevens's historical analysis, it is used in *Rasul* only to rebut the presumption against extraterritoriality. It is used

to argue that the writ presumptively does extend overseas. But this part of *Rasul* does not address the central question raised by the Military Commissions Act: whether alien enemy soldiers, wherever they are held, are constitutionally entitled to seek the writ of habeas corpus. Regardless of whether the writ applies to other aliens held at U.S. facilities overseas, the writ does not—it has never been extended—to alien enemy combatants detained during wartime, whether those soldiers are held inside or outside of the United States.

None of the common law decisions that Justice Stevens discusses in part IV of his opinion granted habeas relief to an alien enemy war prisoner. That is because, as I noted earlier, in the history of habeas corpus, prior to *Rasul*, alien enemy war prisoners have never been found to be entitled to the writ. *Rasul*'s historical analysis can be cited for the proposition that the writ extends extraterritorially, even to aliens. But its discussion does not address the question that we are concerned with here today: whether the writ extends to alien enemy soldiers.

Indeed, at one point in its discussion, the *Rasul* opinion does tend to confirm that the common-law habeas right does not extend to enemy soldiers. In its exploration of the scope "historical core" of the common-law writ, *Rasul* quotes a passage from the Supreme Court's prior decision in *Shaughnessy v. United States*, which noted that executive imprisonment has long been considered oppressive and lawless, and that no man should be detained except under "the law of the land." As *Rasul* notes, this commentary on the historical scope of the writ came from Justice Jackson.

Just 3 years before he wrote the passage in *Shaughnessy* that is quoted in *Rasul*, here is something else that Justice Jackson said about the scope of the writ. Here is what Justice Jackson said in *Johnson v. Eisentrager* about the notion that the writ extends to alien enemy war prisoners: "No decision of this Court supports such a view. None of the learned commentators on our Constitution has ever hinted at it. The practice of every modern government is opposed to it."

So there you have it, from the same source that the *Rasul* majority quotes to establish the historical scope of the writ. The writ upholds and enforces the law of the land, but the law of the land does not extend litigation privileges to aliens with whom we are at war.

Let me also cite another, more recent source in support of my argument. Yesterday, Senator SPECTER quoted an editorial from the New York Times that, unsurprisingly, was hostile to the Military Commissions Act and the Administration. In response to Senator SPECTER's liberal columnist, allow me cite my own liberal columnist Benjamin Wittes. Mr. Wittes writes op-eds for the Washington Post, is a scholar

at the Brookings Institution, and generally has unimpeachable liberal credentials. I doubt that he and I agree on very many things. Yet this is what he had to say, in a recent column in *The New Republic*, about the D.C. Circuit's decision in *Al Odah* upholding the Military Commissions Act:

The [Al Odah] court held both that Congress—not the executive branch—stripped the courts of jurisdiction to hear lawsuits from detainees at Guantánamo, and that it had the constitutional power to do so. As a legal matter, the decision is correct. And, if and when the Supreme Court reverses it, as it may do, the decision won't be any less correct. The reversal will signify only that a majority of justices no longer wishes to honor the precedents that still bind the lower courts.

As the case heads towards the Supremes, you'll no doubt hear a lot about suspension of the Great Writ of habeas corpus—the ancient device by which courts evaluate the legality of detentions. And you'll also hear a lot about Guantánamo as a legal “black hole.” It's all a lot of rot, really, albeit rot a majority of the justices might well adopt.

Until the advent of the war on terrorism, nobody seriously believed that the federal courts would entertain challenges by aliens who had never set foot in this country to overseas military detentions—or, at least, nobody thought so who had read the Supreme Court's emphatic pronouncement on the subject. “We are cited to no instance where a court, in this or any other country where the writ is known, has issued it on behalf of an alien enemy who, at no relevant time and in no stage of his captivity, has been within its territorial jurisdiction,” the Court wrote in 1950. “Nothing in the text of the Constitution extends such a right, nor does anything in our statutes.”

A final passage from Mr. Wittes Commentary reads as follows:

Notwithstanding the passionate dissent in the D.C. Circuit case, the notion that [the Military Commissions Act] somehow suspends the writ—a step the Constitution forbids except in cases of rebellion or invasion—is not credible. As a legal matter, it merely restores a status quo that had been relatively uncontroversial for the five decades preceding the September 11 attacks—that federal courts don't supervise the overseas detentions of prisoners of war or unlawful combatants. The demand that they do so now is not one the Constitution makes.

I would also like to address a point that Senator SUNUNU made on the floor yesterday. Senator SUNUNU argued that, because detention of the Guantánamo prisoners may be indefinite, these prisoners should be given a right to challenge their detention.

In response, I would like to simply describe the protections that the CSRT process provides to Guantánamo detainees and discuss why it would be highly problematic to substitute that process with habeas review.

In the CSRT system, a detainee is provided with a personal representative who is assigned to help him prepare his case before the tribunal. CSRT hearings also include a hearing officer who is required to search government files for “evidence to suggest that the detainee should not be designated as an enemy combatant.” Prior to the actual hearing, the CSRT officers must provide the detainee with a summary of

the evidence to be used against him. CSRTs are then subject to administrative review, and the detainee has an appeal of right to the U.S. Court of Appeals for the District of Columbia, which is charged with evaluating whether the tribunal complied with the CSRT rules, and whether those rules and procedures are constitutional.

All of the procedures described here, incidentally, are above and beyond what lawful prisoners of war are entitled to under the Geneva Conventions in an Article 5 hearing. Those hearings do not assign anyone to help a detainee, they do not require the government to search its files for exculpatory evidence, they do not require that a summary of the incriminating evidence be provided to the detainee, and they are not subject to any judicial review whatsoever.

Indeed, the CSRTs not only provide more process than is required under the Geneva Conventions; the CSRTs require more process than the Supreme Court has suggested is required for the United States to detain even a U.S. citizen as an enemy combatant. In the governing plurality opinion in the 2004 Hamdi decision, the Supreme Court suggested that even a U.S. citizen could be detained as a war prisoner if his detention were reviewed by a “properly constituted military tribunal.” The Supreme Court expressly cited as an example of such a tribunal the Article 5 hearings that are conducted under the Geneva Conventions in cases where there is doubt about a detainee's status. The CSRTs are modeled on and closely track these Geneva Convention Article 5 hearings. And, as I just described, in several respects the CSRT process provides even greater protections than an Article 5 hearing provides.

The Military Commissions Act, of course, does not apply at all to United States citizens. Out of deference to the force of the legal argument made by Justice Scalia in *Hamdi v. Rumsfeld*, both the DTA and the MCA were drafted to only bar aliens from seeking habeas relief, not United States citizens. And, again, the CSRT hearings that alien enemy combatants do receive provide even more process than the Hamdi plurality suggested is owed to an American citizen.

Nevertheless, the detainees and their lawyers are unsatisfied with the CSRT process. They want to give Al Qaeda detainees the right to see classified evidence related to their detention, and they want to allow the detainee to call his own witnesses.

In a recent column in the *National Journal*, Stuart Taylor, Jr. cites a strong example of why it would be a very bad idea to share classified information with suspected Al Qaeda detainees. Mr. Taylor writes:

Consider the list of almost 200 un-indicted co-conspirators, including the then-obscure Osama bin Laden, that prosecutors in the 1995 trial of 11 subsequently convicted Islamist terrorists were legally required to

send to defense counsel. “That list was in downtown Khartoum within 10 days,” U.S. District Judge Michael B. Mukasey of Manhattan, who tried the case, recalled in a recent panel discussion. “And he [bin Laden] was aware within 10 days \* \* \* that the government was on his trail.”

Mr. TAYLOR goes on to cite another example where the release of sensitive information to a suspected terrorist in the course of legal proceedings endangered national security:

In another judge's case, [Judge] Mukasey recalled, “there was a piece of innocuous testimony about the delivery of a battery for a cell phone;” this tipped off terrorists to government surveillance and as a result [their] communication network shut down within days and intelligence was lost to the government forever, intelligence that might have prevented who knows what.

Mr. President, it is incidents like this that we must keep in mind when presented with demands that suspected al-Qaida or Taliban members be allowed to pursue habeas litigation. In civilian litigation, a criminal defendant has a presumptive right to see classified evidence used against him. Under CIPA, the Government must summarize or redact the evidence, but the summary or redaction must still provide an adequate substitute for the raw evidence. If the substitute is not deemed adequate, the Government must either show the evidence to the detainee or it cannot use the evidence.

In the context of Guantánamo, where detention hearings rely heavily, if not exclusively, on classified evidence, applying these habeas litigation rules would mean that we would have to either share classified information with al-Qaida detainees or we would have to let them go. Neither of these is an acceptable option. Even the fiercest critics of Guantánamo must accept that the bulk of the detainees held there are connected to al-Qaida or other terrorist groups. We cannot simply seal off these detainees from all contact with the world and assume that we will hold them forever. We must assume that some will be released and that they will be allowed some communication with those outside Guantánamo and, under these circumstances, we simply cannot hand over classified evidence to Guantánamo detainees.

As happened during the embassy bombers' trials, we must assume that classified evidence provided to the detainees will go straight back to the rest of al-Qaida.

I should also emphasize that denying an al-Qaida detainee access to classified information does not mean that such evidence will not be subject to any adversary review in the CSRT and DTA process. In the pending Bismullah case, the Government has proposed a procedural order under which a detainee counsel who has obtained a security clearance would be able to review the classified evidence in the CSRT hearing. If this proposed order is adopted, as I assume it will be in some form, the detainee's lawyer, though not the detainee himself, will have access

to the classified information used in the CSRT.

So when you hear evidence or arguments that the DTA review is unfair or that it is inadequate, keep in mind the actual stakes at issue. The detainee's cleared lawyer will get access to the classified information, but the detainee will not.

Under these circumstances, should the Congress force the military to provide classified information to both the lawyer and the suspected terrorist?

Another complaint about CSRTs is that the Guantanamo detainees are not allowed to call their own witnesses at the hearings. Just who would those witnesses be the detainees would call? Whose testimony would be most relevant to the detainee's enemy combatant status? The only answer to this question would be the soldier who originally captured the detainee.

Here is Mr. Stuart Taylor's commentary on the proposal that Guantanamo detainees be allowed to compel witnesses at their CSRT hearings:

Should a Marine sergeant be pulled out of combat and flown around the world to testify at a detention hearing about when, where, how, and why he had captured the particular detainee? What if the Northern Alliance or some other ally made the capture? And should the military be ordered to deliver high-level al Qaeda prisoners to be cross-examined by other detainees and their lawyers?

I would suggest that simply to ask this question is to answer it.

Here is more that Mr. TAYLOR had to say about such proposals:

Many libertarians and human rights activists, on the other hand, would settle for nothing less than the full panoply of protections afforded to ordinary criminal defendants. They should be careful what they wish for. As McCarthy points out: Enemy combatants are often in a position to be killed or captured. Capturing them is the more merciful option, and making it more difficult or costly would almost certainly effect an increase in the number killed.

The CSRT hearings and the DTA review strike the right balance. They give detainees enough process to ensure that the persons held are enemy combatants and that they pose no threat to the United States. But this system does not provide a process that would undermine the war with al-Qaida or that is inconsistent with the realities of war.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I listened with interest to the contentions of the Senator from Arizona and would respond in a number of ways. First, the Senator from Arizona went to some length to try to undercut the conclusion that aliens are entitled to the same rights as American citizens—aliens held at Guantanamo—and made reference to no case before *Rasul* had so held.

But the issue is what does *Rasul* hold? I would refer the Senator from Arizona to the opinion of Justice Ste-

vens, which appears at page 2686 of volume 124 of the Supreme Court Reporter, which says as follows:

Aliens held at the base, no less than American citizens, are entitled to invoke the Federal Courts' authority under section 2241.

Now, it is true that the Congress can change a statute, but it is equally true that Congress cannot change a constitutional right, and there is a constitutional right to habeas corpus, which is set forth explicitly in article I, section 9, clause 2 of the United States Constitution, which says:

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Now, where the Constitution is explicit in the circumstances where the constitutional right can be suspended, obviously there is a conclusion that there is such a constitutional right.

The Senator from Arizona goes into considerable analysis as to why the *Eisentrager* case has not been overruled by *Rasul*. Well, it seems pretty plain to me on the face that *Rasul* does overrule *Eisentrager*, and I cited in yesterday's argument the conclusion of Justice Scalia that *Rasul* overruled *Eisentrager*. Justice Scalia complains of that. If he had found some way to distinguish *Eisentrager* in the *Rasul* opinion, I think he would have done so.

The Senator from Arizona says we can't rely on a dissenting opinion as to what the holding is. Well, I would disagree with that. I think a dissenting justice has a good bit of reliability, and especially Justice Scalia. When the concession is made that Justice Scalia reads *Rasul* to overrule *Eisentrager*, I think that is pretty good authority, perhaps better authority than the opinion of Arlen Specter, maybe even better authority than the opinion of the distinguished Senator from Arizona, who is a real legal scholar—on the Arizona Law Review, all the academic standards, but perhaps not superior in legal analysis to Justice Scalia.

Mr. KYL. Mr. President, I will stipulate to that.

Mr. SPECTER. I have just had a stipulation, may it please the court, that Justice Scalia's interpretation would topple Senator KYL's interpretation.

Let me pose the question directly to Senator KYL from the debate we have just joined, and I thank him for coming and participating in the debate. It is a rarity on the floor of the Senate to have two Senators debating an issue.

Isn't the flat statement by the Supreme Court, speaking through Justice Stevens, that "aliens held at base, no less than American citizens, are entitled to invoke the Federal Courts' authority under section 2241"—albeit that is a statute and the Court of Appeals for the D.C. Circuit has tried to sidestep the court opinion in *Rasul* by saying it was a holding on a statute which the Congress can change, and denies the very strong language of the court in saying that there is a right which was established at the time of

1789, and the Constitution speaks explicitly of the ways to suspend the right, so there is a constitutional right—but taking that language, "aliens held at base, no less than American citizens, are entitled to invoke the Federal Courts' authority under section 2241,"—isn't that conclusive that aliens are entitled to invoke the habeas corpus rights under the Constitution?

Mr. KYL. Mr. President, first of all, I appreciate both the courtesy of the Senator from Pennsylvania and his important legal analysis and would answer the question in this way.

I think that most observers believe that the *Rasul* decision is not a decision on the Constitution but on the statute; that it interprets rights based upon the statute, which Congress can change; that it is not a holding that provides a constitutional right to alien enemy combatants to litigate via habeas corpus.

Secondly, the Great Writ that has been quoted by the Senator from Pennsylvania has always been understood in decisions of the court to be defined as it existed at the time of the Constitution. That is why there is always a great interest in looking back to decisions in the common law of England prior to the adoption of our Constitution, the Bill of Rights.

I think, as I said in my statement, that there has never been a case that suggests that at the time the language about habeas corpus was put into our Constitution any court, in either the United States or England, at the time, had ever held that the writ applied to alien enemy combatants. So it has never been held that the writ applies to aliens. It has been held that it applies to U.S. citizens, and it has certainly never been held that it applies to alien enemy combatants.

Mr. SPECTER. Well, Mr. President, may I redirect the line of contention that if the Supreme Court said authoritatively that aliens are covered under a habeas corpus statute, wouldn't that apply a fortiori necessarily to aliens being covered under a constitutional right of habeas corpus?

Mr. KYL. Mr. President, I would say to my colleague that nothing in the grant of the writ in the Constitution, as far as I know, would deny the right of Congress to expand it to include others. Certainly, one could not take away from the writ as it was understood when it was put into the Constitution. For example, we could not deny to U.S. citizens the writ of habeas corpus because of the constitutional provision, but it would not speak to the question of whether Congress could extend the authority of the writ to aliens.

The case here, however, is that the decision in question was based on a statute which Congress had adopted, and it does not go to the question of whether the writ itself ever applied to aliens. In fact, it never applied to alien enemy combatants.

Mr. SPECTER. Mr. President, I would ask the Senator from Arizona if

there is anything in the legislation, 2241, statutory right of habeas corpus, which in any way suggests that it is an expansion of the right of habeas corpus to apply to aliens who were not being comprehended in the ordinary understanding of the constitutional right of habeas corpus. Anything at all in the statute or legislative history?

Mr. KYL. Mr. President, I would have to go back and read it very closely, but my recollection is that the court found the statute rather uninformative and rather unclear, and that was part of the basis for the court reading it in a way that went beyond what I thought it provided. Nonetheless, one can understand that when the court views a statute that doesn't provide clear limitations, its inclination may well be to lean forward in its interpretation.

Mr. SPECTER. Well, Mr. President, it may be uninformative and it may be unclear, but it doesn't, on a statutory basis, extend the right to aliens. To make the contention that a reading of the statutory right of habeas corpus, which goes not beyond that language, was an attempt to extend it, and that the Court, in *Rasul*, was saying, well, the statute gives more rights than the Constitution, I think, is an extraordinary stretch. But I will conclude the colloquy with the contention that certainly the Great Writ, the constitutional right with all its majesty, would be no narrower than a statute. I would concede Congress could extend the statute further, but there is no indication absolutely that the Congress did intend it. And that the court of appeals' decision, distinguishing *Rasul* as being a statutory interpretation, and then the court of appeals saying there is no constitutional right, is thinner than tissue paper. But we will hear more from Justice Stevens, I am sure, on this point in due course.

Let me now move to a portion of my argument yesterday on which the Senator from Arizona has not commented. I will begin with the memorandum from the Secretary of the Navy dated July 7, 2004, which defines enemy combatants and then says that notice will be given to all detainees and they will be notified "of the right to seek a writ of habeas corpus in the courts of the United States."

As I said yesterday, I hadn't noted this provision until we did the research preparing for debate on this amendment. I will first direct a question to the Senator from Arizona as to whether the Senator from Arizona was familiar, before I cited it yesterday, that the Department of Defense had acknowledged the rights of Guantanamo detainees to seek a writ of habeas corpus in the Federal courts?

Mr. KYL. Mr. President, the answer is no, I was not. I regret I didn't hear the argument of the Senator yesterday.

Mr. SPECTER. The Department of Defense concedes that detainees have a right to a writ of habeas corpus, that Congress has delegated to the Secretary of Defense the authority to pro-

mulgate rules relating to the detainees, and where the Secretary of Defense through the Deputy says they have a right to habeas corpus, that should end the discussion.

But let me pursue one other line further here; that is, the fairness of what happens under the Combat Status Review Tribunals.

The memorandum from the Deputy Secretary of Defense defines what an enemy combatant is. It says:

The term "enemy combatant" shall mean an individual who was part of supporting Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy forces.

Then the memorandum further says that:

A preponderance of the evidence shall be the standard used in reaching this determination, but there shall be a rebuttable presumption in favor of the Government's evidence.

The first question I direct to the Senator from Arizona relates to the rebuttable presumption in favor of the Government's evidence, and note that a very basic, fundamental, Anglo-Saxon, U.S. right is the presumption of innocence. Does the Senator from Arizona think it is fair that there be a presumption of guilt articulated in a rebuttable presumption in favor of the Government's evidence?

Mr. KYL. Mr. President, let me just try to respond very briefly to the question of the Senator. Again, I regret I didn't hear the full argument that was made yesterday.

Mr. GRAHAM. Will the Senator yield?

Mr. KYL. I am happy to yield.

Mr. SPECTER. Wait a minute. Mr. President, regular order. The Senator from Arizona may yield, but I have directed the question through the Chair to the Senator from Arizona. Having had an extensive discussion on this issue yesterday—and when I say "extensive," it was extensive by the Senator from South Carolina—all factors considered, I would just as soon not hear it again but would be willing to listen to it later.

Mr. KYL. Mr. President, I will respond very briefly by saying, first of all, I fully associate myself—

The PRESIDING OFFICER. Without objection, the Senator from Arizona may respond.

Mr. KYL.—with the comments of my colleague from South Carolina yesterday.

To the first point, if I could just make a brief comment, after the *Rasul* decision, after the *Rasul* case was decided—

Mr. SPECTER. No coaching.

Mr. KYL. No coaching.

After the *Rasul* case was decided, I am sure, Senator SPECTER, you would agree it was important for the Department of Justice to advise people of the rights that were provided as a result of that decision. That is my under-

standing of what they did. They had a policy of saying: The Court has made this decision. They found a statutory right of habeas corpus, and you have the right to do the following things under that statute. But that would not be a pronouncement of law by the Department of Defense. Certainly it hasn't been relied upon, to my knowledge, by any court in deciding what the scope of the writ is. So, as to your first point, I hardly think it is good evidence of the constitutional application of the writ to detainees that after the *Rasul* decision, the Department of Justice properly advised people as to their statutory rights based upon that decision.

As to the second question—just one quick quotation. This was provided to me, at my request, by Senator GRAHAM. In the Hamdi case, in the O'Connor opinion, she specifically answers the question you posed, Senator SPECTER, on page 27 of the opinion, where she says:

Likewise, the Constitution would not be offended by a presumption in favor of the Government's evidence so long as that presumption remained a rebuttable one and a fair opportunity for rebuttal were provided.

Mr. SPECTER. Mr. President, that is a good segue into my next question, as to whether the Combat Status Review Tribunals give you a fair opportunity. I was about to quote Justice O'Connor in support of my argument that there is not a fair opportunity. Let me be very specific. The decision of Judge Green, In re: Guantanamo Cases, which I cited yesterday, which appears in 355 Fed. Sup. 2d 443—and I quote from her statement, at page 468. Judge Greene says this:

The inherent lack of fairness of the CSRT's [Combat Status Review Tribunal's] consideration of classified information not disclosed to the detainees is perhaps most vividly illustrated in the following unclassified colloquy, which, though taken from a case not precisely before this judge, exemplifies the practice and severe disadvantages faced by all Guantanamo prisoners.

In reading a list of allegations forming the basis for the detention, Mustafa Ait Idir, a petitioner in Boumediene—which is the case that went to the court of appeals; this is the case which they decided and upheld the procedures of the Combat Status Review Tribunal—Judge Green goes on to say:

The Recorder of the CSRT asserted: "While living in Bosnia, the detainee associated with a known al-Qaida operative."

In response the following exchange occurred.

Detainee: Give me his name.

Tribunal President: I do not know.

Detainee: How can I respond to this?

And then the detainee later says:

I asked the interrogators to tell me who this person was. Then I could tell you if I might have known this person, but not if person is a terrorist. Maybe I knew this person as a friend. Maybe it was a person that worked with me. Maybe it was a person that was on my team. But I do not know if this person is Bosnian, Indian or whatever. If you tell me the name, then I can respond and defend myself against this accusation.

The Tribunal President then says:

We are asking you the questions and we need you to respond to what is on the unclassified summary.

And the detainee later said:

I was hoping you had evidence that you can give me. If I was in your place—and I apologize in advance for these words—but if a supervisor came to me and showed me accusations like this, I would take these accusations and I would hit him in the face with them. Sorry about that.

And then in parens it says:

Everyone in the tribunal room laughed.

That is from the transcript. The Tribunal President said:

We had a laugh but it is OK.

Then Judge Green says:

The laughter reflected in the transcript is understandable, and this exchange might have been truly humorous had the consequences of the detainee's "enemy combatant status" not been so terribly serious and had the detainee's criticism of the process not been so piercingly accurate.

This tribunal, as to the detainee in the Boumediene case, that got to the circuit court of appeals—how the circuit court of appeals could say this is fair, how the circuit court of appeals could say this comports with the definition the Department of Defense has set out, that enemy combatant means "an individual who is a part or supporting Taliban or al-Qaida forces or including a person who has committed a belligerent act or who has directly supported hostilities in aid of the enemy Armed Forces" when the only thing in the transcript is "while living in Bosnia the detainee associated with a known al-Qaida operative"—"associated with a known al-Qaida operative" hardly meets the definition of the Department of Defense itself, of supporting Taliban or al-Qaida forces or "associated forces that are engaged in hostilities" or "a person who has committed a belligerent act."

This detainee, whose detention was upheld by the Court of Appeals of the District of Columbia on as great a stretch as imaginable on legal principles, is looking at a record where all the detainee was supposed to have done was talked to al-Qaida. They couldn't even name the person. That is miles from satisfying the definition by the Department of Defense.

Let me ask the Senator from Arizona, is that fair?

Mr. KYL. Mr. President, I answer my friend and colleague from Pennsylvania that I disagree with a lot of jury verdicts and with a lot of court opinions. But once a matter is concluded, as officers of the court, we are supposed to respect the decision of the court. I do. I don't know the facts of every case that has been litigated, but they have done so under a procedure that has been upheld as constitutional. Just as I was willing to stipulate that Justice Scalia probably has a better handle on Supreme Court interpretation than either—well, I didn't stipulate that he has a better interpretation than Senator SPECTER, but I acknowl-

edged in my case that he would—I think you have to say that if a court of appeals has made such a decision, then it is a bit presumptuous for us, with great confidence, to say that they necessarily were wrong.

So I am not going to second guess a decision like that. I would rather simply point to the most recent decision which upheld the procedures in the Al-Odah case—that case will be decided by the U.S. Supreme Court. My colleague and I have a different view, I suspect, as to how that case will come out. We will just have to wait and see. If it turns out that I am correct, that the court of appeals' decision is correct, then this debate which we have had here probably won't matter. But I do believe that until that decision is made, it would be unwise for us to again change the law, thus throwing into even greater confusion what has up to now been a pretty confused state of affairs.

Mr. SPECTER. Mr. President, I would not mind being a bit presumptuous. I wouldn't even mind being a lot presumptuous in response to the opinion of the Court of Appeals for the District of Columbia. But I don't think it is presumptuous at all to go into the facts, which we know from Judge Green's opinion, as to the detainee involved in the Boumediene case and where the only allegation is that he talked to an al-Qaida person and they couldn't even give the name.

You have the definition of the Department of Defense requiring that there be information about the detainee supporting al-Qaida forces or committing a belligerent act. However, nobody said those things about the detainee in the case. And then there is the court of appeals, a split court, with the opinion of Judge Rogers in dissent, I understand the relative merits of a two-judge majority, one in dissent, but that doesn't overcome the continuing importance of the Rogers' analysis of the majority opinion concerning their attempt to slice the apple by holding that the Supreme Court's opinion in *Rasul* was statutory and not constitutional.

The majority said that the *Eisentrager* case was not overruled by *Rasul*. But it obviously was, as Justice Scalia acknowledged in his dissent in the *Rasul* case. And Justice Scalia would have all the more reason for disagreeing if there was any basis at all to say that *Eisentrager* was not overruled.

You have the court of appeals relying on the *Eisentrager* case that was specifically overruled by *Rasul*, and not acknowledging a constitutional right of habeas corpus and not acknowledging the fact that while you can change an act of Congress, a statute cannot trump the Constitution.

I do not think it is presumptive at all to say that the procedures under the combat status review tribunal ought to be changed.

Regrettably we are not going to get a vote on this matter on this bill. We are

not going to get a vote because a cloture petition has been filed. That is arcane. But in the unlikely event anybody is watching on C-SPAN 2, that means nongermane amendments will fall, and this is nongermane for technical reasons.

I tried yesterday to get cloture on this amendment, which would have enabled us to get a vote tomorrow morning at the time of the cloture vote on the underlying bill. However, that required getting 17 signatures, and the majority leader was opposed, and the Democrats would not sign on. There are a few Republicans who were prepared to sign on; some did.

But talking to Senator LEAHY, who is the cosponsor, we are going to try to get the majority leader to bring it up free standing, or we can add it on to some other bill, and we will be better prepared to try to get cloture in the future.

Let me say one final word, and that is, Senator KYL and I are good friends. Senator GRAHAM and I are good friends. We sit on many matters where we are in agreement. I have great respect for Senator KYL. I already identified his qualifications—law review, outstanding scholar, outstanding Senator. Senator GRAHAM is an acknowledged expert in military law, knows more about military law than perhaps anybody else in the Chamber, not that he knows more about constitutional law than anybody else in the Chamber, but as much constitutional law as anybody else in the Chamber.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, this is going to sound too much like the mutual admiration society, but before Senator SPECTER said what he said, I rose because I wanted, in return, to pay him a compliment.

As chairman of the Judiciary Committee prior to the last election, he performed admirable service to the Senate. I think it is not well known that that kind of a job requires a lot of different skills to be employed to deal with a lot of cantankerous Senators who have their own ideas about how things should be done. Senator SPECTER always conducted that committee in a way which allowed us to get business done, and respected the rights of Senators. Far too often, debate, or what passes for debate in this Chamber, is speeches given by Senators on different points of view, like ships passing in the night with no joining of the issues, and no serious discussion of complex legal issues, when that should be required.

Certainly the Presiding Officer would be well qualified to judge what I am saying. But I always appreciated the opportunity, even when we were in disagreement, to discuss and to debate with the Senator from Pennsylvania, because he is a serious scholar who takes these matters seriously. He may not always come up with legal theory with which I agree, but it is always interesting to debate him. At the end of

the day, I would like to think this kind of debate does add to a record that the Court or other observers might actually find informative and helpful in their decisions.

Again, while we disagree with each other on this matter, I think it is apparent that we do so respectfully and with regard for each other's opinions.

I want to say there is no greater expert in our body on military law than the Senator from South Carolina. I have always appreciated his wise advice and counsel on these matters as well.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from South Carolina.

Mr. GRAHAM. Madam President, this is a session worthy of the Senate, worthy of the country, and I think incredibly important. I compliment Senator KYL for what I thought was an excellent overview of what the law requires in this area, what the Geneva Conventions require, and how our country exceeds the requirement of the Geneva Conventions.

To my good friend Senator SPECTER, there is no better champion of fairness and constitutional causes than Senator SPECTER. On this we respectfully disagree as to what the courts have said, and as far as the lay of the land of how you do this.

I do not come to this body as an expert on the Geneva Conventions. I have had some time in the military as a military lawyer. I have a pretty good understanding of what is going on in some respects. But I ask every Senator to review what is going on and make their own judgments, ask their own legal friends if they are not lawyers, and try to be fair.

We will all serve the country well if we will have a process that is constitutionally sound, that meets the test of fairness, and also recognizes we are at war and we are under great threat. So my basic presumption here as a Senator is I want to put infrastructure in place that recognizes the country is in an ongoing global struggle, and that as part of that global struggle we are dealing with people who are out of uniform.

This is not a capital to conquer or a navy to sink or an air force to shoot down. This is a unique war in the sense that it is ideologically based, not a particular location we are trying to conquer and not a particular uniform we are trying to suppress. The global war on terrorism is about extreme versus moderation, and it is rearing its head all over the planet.

So the battlefield in this war, from my point of view, is the globe itself, just as in World War II—the al-Qaida enemy. That is who we are talking about, people affiliated with al-Qaida, al-Qaida-like operatives who are going throughout the planet trying to kill civilians, rampantly trying to inflict harm on our own troops for an ideological agenda based on religion. They have no boundaries. They are not signatories to the convention. They do not play by the law of armed conflict.

But even if they have a status in the law of armed conflict, we are trying to make sure their status is determined in the proper way. We realized in past wars that the Viet Cong and others operated outside of a uniform, in a guerrilla-type fashion. Well, the terrorists operate out of uniform with absolutely no respect for any concept of the law of armed conflict. But once they are captured, if they are not killed, then it becomes about us, not about them.

What does the United States do when it finds an enemy combatant, someone out of uniform, who is engaged in hostilities? See, I do believe 9/11 was not just a crime; this was an act of war. There are warriors all over this planet involved in a great struggle, in their minds, against moderate Muslims and every other religion, Christian, Jewish faith, and they have no place for the rest of us. If you solved the Jewish-Palestinian problem tomorrow, they would still be coming after us.

The people at greatest risk are moderate Muslims in the Middle East who would tolerate different ways of looking at religion. So there is a global struggle, and when we find a person we believe to be an al-Qaida operative or a supplier of materials to al-Qaida, the first thing, if they survive the battle, is that our military must fight the war, and if they are captured, we have to determine their status.

If there is a question as to whether the person captured by the American military is a lawful combatant, an enemy combatant, or nonbelligerent, who makes the decision as to what is the proper status for that individual?

Well, under the law of armed conflict—and I do believe we are at war—it is the military. Under the Geneva Conventions, it is the military. Article 5 of the Geneva Conventions is very important. Because within that article, it informs the world at large, the signatories of the conventions, that a competent tribunal must be empaneled to determine the status. That competent tribunal panel all over the world is the military.

The reason I object so vehemently to allowing habeas petitions to be filed to determine who is a military threat is we would be conferring what is a military decision, historically and under the law of armed conflict, and literally making it a civilian judge's decision where witnesses would be called and the judge would have a full-blown trial, with some very sensitive information.

I do respect our judges, but with all due respect to our judges—I think most of them appreciate this—they are not trained as to who a military threat is to the United States. That truly is a military decision, and we are not making that up after 9/11. That has been a military decision under the Geneva Conventions article 5 since the conventions were drafted. So we are doing nothing new because we were attacked by an “un-informed” enemy.

The question as to what Senator SPECTER has raised: What process do we have in place to determine if a person is truly an enemy combatant, a

concept recognized by the Geneva Conventions, the combat status review tribunal to me is not only constitutionally sound, it goes beyond what the Geneva Conventions require. Senator SPECTER read a transcript of a case that went to the DC Circuit Court of Appeals. I want us to slow down for a moment and think about that. The case as to whether this person was an enemy combatant worked its way up through our Federal judiciary to the second highest court in the land.

Under the law we passed last year, we allowed in every decision by the military that results in a finding that a person is an enemy combatant that that individual will be able to go to our court system, which is not required under the Geneva Conventions and is done nowhere else that I know of, and the court will review that case on two grounds: Were the procedures in place constitutional—Senator SPECTER mentioned this—and do you feel comfortable with the rebuttable presumption? Well, that has already been decided. In the Hamdi case of 2004, they specifically comment on the CSRT procedures. There is a preponderance of the evidence test required. The Government must prove by a preponderance of the evidence that the person in question is an enemy combatant.

This is not a judicial proceeding, this is an administrative proceeding. It is like the EPA deciding an administrative question. But it is an important decision, because if you are an enemy combatant, you can be held for an indeterminate period of time. As long as you are a threat, you can be held as long as hostilities exist.

The problem with this war is we do not know when the war is going to be over, so we want to build robust due process.

Let me tell my colleagues without hesitation: We have let almost 200—I can't remember the number—go from Guantanamo Bay who had been captured and determined to be enemy combatants. Every year their status was reviewed because we do not want to keep people forever unless there is a reason to keep them. Three things are looked at in every person's case administratively: Do you have intelligence value still; are you a threat to the country; and has anything new come into the case file to say you were originally misidentified as an enemy combatant? Twelve of the people released have gone back to the fight, have gone back to trying to kill Americans and civilians.

The question for this country and the world is when it comes time to decide to release somebody, there is risk to be had in that decision. Who should share that risk the most? Is it the civilian populations that have been the victims of these “un-informed” killers who have chosen to join these organizations or support them with no boundaries or should it be the people who take up these causes?

I will tell you where I am coming down. If there is a doubt as to whether they continue to be a threat to our country and other peace-loving people, we are not going to turn them loose to fight us again. Every enemy combatant is not a war criminal. There is a separate proceeding at Guantanamo Bay to deal with those people involved in war crimes. If you start mixing the two, it will come back to haunt our country because we do not want to stand for the concept as a nation that every time an American soldier is captured in the battles of the future it would be appropriate to label them a war criminal. War criminals have to do specific things. Being part of an enemy force does not make one a war criminal.

So the point I am trying to make is the administrative procedures in place at Guantanamo Bay have been found to be constitutional, but we added a provision last year that allows the court to review whether the tribunal's finding was supported by a preponderance of the evidence, and allowing a rebuttal presumption in favor of the Government's evidence.

In other words, the DC Circuit Court of Appeals can look at the military's findings, not just the process, and they can say, as a panel of judges: Wait a minute, there is no competent evidence to support a finding that you are an enemy combatant. The court can say the case file is deficient. Not only was the process deficient—the process could be constitutionally sound—but it could result in an individual case where there was not sufficient evidence in the opinion of the court. The court does this all the time.

The court will review administrative bodies' decisionmaking abilities throughout this land. It could be in the EPA, it could be in some other agency of the Government, where the court will be able to look at the hearing officer's findings and determine if there was sufficient evidence to support that hearing officer's finding.

So going back to the transcript Senator SPECTER read, they did not tell him who it was. Well, maybe the reason he was not told who informed is because if we put out in a public setting our informant system, they will wind up getting killed. That is not an unknown concept in criminal law.

So I would argue, there is information in these cases that will never be publicly disclosed because if we start publicly disclosing the entire network that led to this capture, we are going to get people killed and we will be less safe. That is why we have a classified portion.

Shaikh Mohammed, the mastermind of 9/11, will be going through this process tomorrow, I believe, at Guantanamo Bay. Fourteen other high-value detainees captured in the global war on terror—very significant players in the al-Qaida movement—will be given a hearing at Guantanamo Bay, where the Government will have to prove the person in question—Shaikh Mohammed—

is, in fact, an enemy combatant as defined by our own regulations, consistent with the Geneva Convention.

These hearings will be closed. I applaud the fact they are closed. The evidence will be redacted and given to the public and the press. But there will be a transcript available to be reviewed by the DC Circuit Court of Appeals, including the classified portion, in a classified setting.

I think it would be a huge mistake to disclose the methods and operations and the sources that led to the capture of Shaikh Mohammed in an administrative proceeding. Our courts will look at that evidence in a classified fashion because Shaikh Mohammed will be allowed to have his case reviewed, after the military makes their decision, in Federal court—something never done in any other war. The reason we did this last year, with Senator LEVIN's help, was to make sure—because we do not know when this war will be over—there will be a check and balance on a military decision never known in any other war.

I support that check and balance. I support the idea that every military decision regarding enemy combatant status will work its way through our court system. I vehemently object to taking what is a military decision and giving it to a civilian judge in a habeas forum, which is a complete Federal trial where the civilian judge makes the decision, not the military. Let the judges review the military work product. Do not give it to the civilian judges.

Shaikh Mohammed will be classified one way or the other. I am sure he will be classified as an enemy combatant. But the DC Circuit Court of Appeals will get to review his case. What is likely to happen in his case, if you believe the press reports? If he truly can be proven to be the mastermind of 9/11, he will be tried as a war criminal because the activities he engaged in—of orchestrating a series of attacks on our country, where you hijack civilian aircraft to go into the World Trade Center and to attack Washington, DC—would be a violation of war, as well as a crime.

So he could work his way into the military commission trial procedure. "Enemy combatant" is an administrative determination. Charging somebody with a war crime is a totally different process. If the Government charges him with a war crime in a military commission setting, in a military commission format at Guantanamo Bay, they will not be allowed to give to the jury classified information proving he is guilty of what we are accusing him of doing, unless they share it with the accused. That was my objection to President Bush's proposal. I do not want to create a precedent where one of our soldiers could be tried in a foreign land, accused of being a war criminal, and never be given the evidence and be able to defend against what would be a criminal proceeding result-

ing in death or long-term imprisonment.

So for Shaikh Mohammed or anyone else, if the Government decides to use classified evidence to find someone guilty, they get a chance to defend themselves because we are talking about a punishment that could include execution.

There are two different concepts. The rules are different. What goes on in a military commission trial is consistent with what we do with our own troops under the Uniform Code of Military Justice when we try them for crimes. One is an administrative determination that exceeds the Geneva Convention requirements. The other is a criminal proceeding under the Law of Armed Conflict that I believe will be constitutional and the courts will say is a process worthy of this country.

As to what the law is, I say to my good friend, Senator SPECTER, I believe the Rasul case was based on this concept. The Department of Justice argued that Guantanamo Bay was outside the jurisdiction of the United States. If that were the case, if they won that argument, the constitutional provisions of habeas would not apply, nor would the statutory provisions. But Rasul was about a statute, not about the constitutional provisions, in my opinion.

Here is what the court said: They rejected the Bush position that the laws of the United States do not apply to Guantanamo Bay because of the lease and because of the relationship we have to that facility.

Do you know what. I think the court was right. I think that was an ill-advised position by the Bush administration.

So once Rasul was decided, and they rejected Eisentrager's statutory interpretation test, the Rasul court, in my opinion, said since it is within the United States, and Congress has not spoken to this in 2241—Congress has never said because you are an alien enemy combatant at Guantanamo Bay you cannot have a 2241 right—we are going to confer that right until Congress decides otherwise.

Mr. SPECTER. Madam President, will the Senator from South Carolina yield for one question?

Mr. GRAHAM. Yes, I will.

Mr. SPECTER. Madam President, when the Senator from South Carolina says, in the case cited that got to the Court of Appeals for the District of Columbia, where the charge was he had talked to an al-Qaida person, but they could not give the name—and the Senator from South Carolina seeks to justify that on the ground there might be some circumstance where disclosing the name would reveal a confidential source—can the Senator from South Carolina give any conceivable way there would be a disclosure of a source simply by identifying the al-Qaida person this detainee was supposed to have talked to?

Mr. GRAHAM. Madam President, if I may, just not being an intelligence expert, when we start naming the people involved around the individual, then we are talking about locations, specific sites. I would be very worried if we started naming in detail al-Qaida operatives, where they were, what they said, because that could set in effect a chain of events that would allow the enemy to understand what happened in that transaction.

We may just disagree about this issue, but I do believe that the classified—that Shaikh Mohammed—maybe I can say it this way. I am glad that Shaikh Mohammed's case is classified, and we are not going to reveal to the public how we captured him, all the evidence that led us to find out where he was and what he was doing. I think it would be a nightmare for this country.

As to the DC Circuit Court of Appeals opinion, I say to Senator SPECTER, they said the procedure was constitutional. I agree with them. Whether or not the individual case had sufficient evidence to support a finding is now subject to review by the court. This gentleman will get that review by the court based on what we did last year.

Mr. SPECTER. Madam President, I find it very hard—really impossible—to follow that answer. I cannot conceive of what the Shaikh Mohammed case has to do with my question or has to do with the proceeding before the Combat Status Review Tribunal for the detainee whose case got to the court of appeals, where he was accused of talking to an al-Qaida person, and they could not even identify the name of the person. That is not asking any places and times and whatever other activity was taken. I would rest my case, contrary to the arguments by the Senator from South Carolina, on that point.

If anybody thinks the Senator from South Carolina has given any reason that they could not identify the identity of the al-Qaida person without disclosing a confidential source—not talking about when, where, and under what circumstances—if my colleagues who will vote on this ultimately are satisfied with the answer by the Senator from South Carolina, then I will accept their judgment.

Mr. GRAHAM. I appreciate that. And I will continue. I will say this to my good friend from Pennsylvania. You were reading the transcript of a case that went on appeal. You have determined yourself that an injustice was rendered. You have made an opinion inconsistent with what the court found. You have your own sense of justice. I appreciate it, I admire it, but I do believe the court is right and you are wrong.

I do believe there is no constitutional right available to enemy combatant terrorists, noncitizens. I do not believe Rasul decided that, because if they had decided that, all these cases we are talking about would have been dismissed.

The circuit court of appeals may not be the—they would have gotten that. We have a case going to the DC Circuit Court of Appeals that either they have no idea of what the law is or Senator SPECTER is wrong.

So I hope my colleagues will understand the DC Circuit Court of Appeals is not blind to the issues in this case, they just did not miss the fact that the Supreme Court, in Rasul, 3 years ago, declared a constitutional right and the DC Circuit Court of Appeals is out to lunch as a group of judges who do not understand one of the biggest decisions in American jurisprudence. If my colleagues believe that Rasul created a constitutional right for an enemy combatant, noncitizen, and everybody in the legal system has missed it, then you should not trust anything coming out of the DC Circuit Court of Appeals, you should not trust any decision coming from district court judges all over the country who are dismissing these cases, and you should not believe a thing I say.

But there is a reason the DC Circuit Court of Appeals did not feel bound by a constitutional finding in Rasul—because the court did not find that. There is a reason they upheld the proceedings in the case in question, and some of that reason may be classified. I don't know. But I do know this: It is not good law or public policy to take a transcript released by the defense counsel and read it in isolation and try to use that anecdotal story to say that the whole process is broken, when the court looked at the entire process and found that it was not broken. I can promise my colleagues that if the Rasul case said there was a constitutional right to habeas corpus by a non-citizen enemy combatant, it would have been a major issue in the Al Odah case. The reason Al Odah decided what it did is because it rejected the defense claim there should be, and there is no evidence in the Al Odah case that the DC Circuit Court of Appeals took precedent in the Rasul case and came out with a different finding. Don't my colleagues think there would have been a long discussion in the Al Odah case by the DC Circuit Court of Appeals that here is why the precedent set in Rasul for a constitutional habeas right for an enemy combatant noncitizen is wrong?

So please give the DC Circuit Court of Appeals some credit for not missing the biggest issue in military law in 200 years because they didn't miss it. Please give the Department of Defense some credit that when they issued this memo to detainees and their lawyers in July of 2004 indicating there is a habeas petition available to you, that it wasn't the Department of Defense's desire to create that right and that what they were doing was consistent with Rasul in saying that under 2241 you now had this right. For someone to suggest that memo was a conscious decision by the Department of Defense to give a habeas right to detainees I think

completely misunderstands what the memo was about, distorts what it was about, and is a complete misunderstanding of what happened in Rasul. The Department of Defense had no other choice but to tell the detainees after the Rasul decision: You can file habeas petitions under 2241.

The Supreme Court in three cases has told the Congress: You need to speak here. We found a statutory right because you haven't excluded it. Do you want as a Congress to confer on the Shaikh Mohammeds of the world an ability to go into Federal court of their own choosing, to find the most liberal judge they can find in this country, and take the military and every other intelligence agency to court and have that judge, in a full-blown trial, determine whether this person is an enemy combatant? That would be changing a process on its head. That would be taking away from the military the ability they have under the Law of Armed Conflict to decide who an enemy combatant is and give it to a civilian judge who is not trained in that. It would be a fundamental, far-reaching mistake that would haunt us and undermine our national security, put judges in positions they are not trained for, and take away from our military an obligation and right they have to defend us. There is a place for judges. There is a place for the Congress. There is a place for the President. There is a place for those fighting this war.

I have one simple goal. I want to put people in the lanes where they can do the most good and the least harm. I do believe, if we turn this war into a crime and if we take the Shaikh Mohammeds of the world and we let civilian judges have a full-blown trial about how we found out they were the mastermind of 9/11 and if you take away from the military what a military threat is and you give it to civilian judges, you are going to make this war much harder to prosecute, and it will come back to haunt us. It has never been done before for a reason. We never allowed the Nazis, who are on par with al-Qaida, the ability to go into our Federal courts and sue the people who were fighting them—our troops. Because Justice Jackson in 1950 said: You would undermine the commander. They would be fighting the enemy on two fronts: on the battlefield and in the courts of the United States. It would undermine the commander's credibility. It would lead to chaos. There is a reason the Germans and the Japanese never went to Federal court. It would be, in my opinion, dangerous to give to al-Qaida more rights than we gave to the Nazis.

This is a great debate to have, but it needs to be based on some sound concepts. I don't think it is a sound concept to say that Rasul gave a constitutional right to noncitizen enemy combatants under our Constitution. I don't think it is a sound concept to say that the DC Circuit Court of Appeals 2

weeks ago missed that. They didn't miss it. That is not what this debate is about. This debate is about whether 2241—something under our control—whether we as a Congress want to give to enemy combatants the ability to sue our own troops. There are over 160 lawsuits filed. It has made a nightmare of Guantanamo Bay. They are suing our own troops for medical malpractice, for DVD access, for better exercise. You name it, they have brought a lawsuit around it and it has clogged our courts and it has impeded the ability to run this jail.

Let me tell my colleagues, in a classified and unclassified manner, the intelligence we have received from people housed at Guantanamo Bay has helped this country defend itself. The last thing we should be doing in an ongoing war is hampering our ability to defend ourselves because we are having two fronts—the military front and the legal front—that confers a status on our enemy that will undermine the ability of our military to defend us.

This is a statement from one of the lawyers who has filed one of these 160 lawsuits:

The litigation is brutal for the United States. Boy, was he right about that.

We are having to call people off the battlefield. We are having to bring people off the battlefield into the new battlefield—the courtroom—to explain to some civilian judge why we think they are an enemy prisoner—enemy combatant that threatened the United States.

It is huge. We have over 100 lawyers now from big and small firms working to represent these detainees. Every time an attorney goes down there, it makes it that much harder for the U.S. military to do what they are doing.

Boy, was that right.

You can't run an interrogation with attorneys.

You better believe that is right. We are interrogating to make sure we find out what the enemy is up to the best we can so they don't kill us. Now, if you want to take the interrogation process at Guantanamo Bay and put a bunch of lawyers in the middle of it, which we have never done in any other war—we never gave to the Nazis—then you are crippling the ability of this country to defend itself. It has nothing to do with fairness. You are creating a right never known in an armed conflict previously, and you will be criminalizing what I think is a war in a dangerous way.

What are they going to do now that we are getting court orders to get more lawyers down there? They are going to shut off the interrogation and the information is going to stop.

We have made mistakes at Guantanamo Bay. The Bush administration has taken legal positions that I don't think have been sound, but I believe we have finally got this right, and I am going to end now.

I think after a lot of give and take and after a lot of court decisions, we are on the road to exactly where we

need to be, and we have it right. Here is what we have in place: a system that is Law of Armed Conflict compliant, Geneva Conventions compliant, that realizes that fairness is part of being an American, but we are at war with people who want to kill us, and if they could, they would go back to it, some of them. Some of them are war criminals. Some of them are warriors who are assisting in the effort that had to be kept off the battlefield until they are no longer a threat. The military is doing a darn good job, and I stand by the men and women down there who are carrying out this job at Guantanamo Bay. I stand with you. I am proud to be your advocate in this body. You are getting good intelligence, consistent with lawful interrogation techniques. You are making decisions about who an enemy prisoner is, who a threat is to this country, in a sound way. Keep it up. Your work product will be going to court, so be mindful that what you do will get reviewed, as it should. Some have been let go—about 100-and-something. Most, as far as I know, have gone back and not been a threat. Every year, every person at Guantanamo Bay will get to have their case argued anew. They will get to make a case: I am not an enemy combatant. I am no longer a threat. I have no intelligence value.

We do not want to misidentify someone. That has probably happened. This is a confusing war. I am not here to say there has not been someone sent to Guantanamo Bay who was a mistake. That is true of jails in Missouri, and it is true of jails in South Carolina. But you can't say there is no risk involved when you release somebody because I can tell my colleagues with certainty that 12 of the people we thought were no longer a threat, because we wanted to be fair and let them go, have gone back to try to kill Americans.

There is no perfect outcome. You try to create a system that models who you are and is as fair as possible, recognizing you are at war. These war crime tribunals and commissions are going on during the war. The enemy combatant determinations are being made during the war. The reason we don't want to disclose how we found Shaikh Mohammed is because the war is going on, and we don't want to help people who are our enemies. So everybody caught and suspected by our military of being an enemy combatant involved in a global war on terror out of uniform supporting al-Qaida, they are going to get to go to Federal court, but we are going to let the military decide if they are a threat first, and the judges of this country can look over the military's shoulder and see if the military got it right in that case and if the procedures are fair. If you are convicted of a war crime at Guantanamo Bay, as Shaikh Mohammed may be or someone like him, you are going to get your day in Federal court because it is an automatic right. Whatever procedures are used by our military, which

is modeled after our own process to try our own people, will go through legal scrutiny, the procedures and the outcome.

So if you are worried as an American that we are putting people away forever without due process, don't worry about it. That is something to be concerned about. If you are worried that your country has gotten somebody in the global war on terror and we house them and nobody ever gets to look at the work product, don't worry about it. But if you are worried that the Congress is about to confer a right never known in any other war to al-Qaida that will undermine our security, you are right to worry. It is all about judges: What they should do and when they should do it—and I respect judges. It is all about the military: What should they do and when should they do it. God knows I respect them.

We have the right balance. The military fights, they kill our enemies, they capture our enemies, and once they are captured, they are going to be treated by this country under the Law of Armed Conflict, consistent with our values and consistent with the Geneva Convention and consistent with the fact that we are at war. Everything they do when it comes to adjudicating these prisoners' status will be reviewed in our Federal courts after the military acts. Every person convicted will have their day in court, and the courts can look and see if they were treated fairly. That is what America should do. That is what we are doing.

Please understand this war is different, and we have to make accommodations in a variety of ways, but this is a war. This is not a crime. These people we are rounding up throughout the globe wish to kill us all.

Mr. President, I yield the floor and I note the absence of a quorum.

THE PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

THE PRESIDING OFFICER (Mr. SALAZAR). Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, are we in morning business?

THE PRESIDING OFFICER. We are not in morning business. We are considering S. 4.

Mr. GRASSLEY. I ask unanimous consent to speak as in morning business.

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

#### THE BUDGET

Mr. GRASSLEY. Mr. President, today, as I did a couple days last week, I continue with my discussion on the issues the Senate will face as the Democratic leadership draws up its budget resolution, and that is going to be 2 days next week in the Budget Committee and then I think the week after next, depending on what the

Democratic leader decides to do, we generally will have a whole week of debate on the budget and adoption of the budget.

We face an important milestone because the Democratic leadership controls the Senate for the first time since the 2002 election. Over the past 4 years, there has been a lot of passionate debate over the fiscal policies the Republican leadership proposed and implemented over the last 4 years. In November, the voters sent a Democratic majority to Congress. The budget debate we are about to enter provides Democrats with their opportunity to chart a fiscal policy path for the Nation.

Before the budget arrives, I have taken to the floor to recap and evaluate some of the consistent themes we have heard from the Democratic leadership over the past 4 years. Since the Finance Committee has jurisdiction over nearly all of the revenue side of the budget, I focused on the issues on that side of the ledger, the revenue side.

Since the position of the Democratic leadership has been to let the bipartisan tax relief plans of 2001 and 2003 expire, I talked about the effects of that automatic tax increase—yes, automatic tax increase—that happens without even a vote of the Congress if we don't continue this tax policy that was adopted in 2001 and 2003 beyond the year of 2010.

It is a very important consideration. For the last 4 years, Republican budgets on Capitol Hill have made it clear that our priority was to ensure that virtually every American taxpayer would not see that automatic tax increase come in their earnings of 2011, and that still is our policy. That is a policy reflected in the budget the President of the United States has sent to the Congress. So the year 2011 is the year the bipartisan tax relief sunsets.

I emphasize that 2001 was the year of bipartisan tax relief. I had the good fortune of working that year, 2001, with Senator MAX BAUCUS helping me get that bipartisan tax relief passed. He is now chairman of the committee, being that the Democrats are in the majority. I have the good fortune of maintaining a close working relationship with him.

The President's budget, as I already said, maintains the assurance that these tax policies of the last 7 years will continue in place beyond the year 2010. During the 4-year period 2003 to 2006, the Democratic leadership was harshly critical of this policy which was passed in 2001 and 2003; that is, the Democratic leadership opposed the fiscal policies of preventing a tax increase on virtually every American taxpayer automatically because Congress wouldn't even have to vote on it.

My first speech defined the tax increases built into that fiscal policy. My second speech highlighted some of the macroeconomic risks of that widespread automatic tax increase. Last

week, I remarked to the Senate and discussed with the Senate potential omissions in the Democratic leadership's budget; that is, the discussion was about fiscal policy that was present in prior budgets. If the Democratic leadership's past criticisms of those budgets were carried out, the fiscal policy of continuing tax relief would end. This week, I am going to focus on the track record of the Democratic leadership and discuss potential problems from proposals that might be contained in that budget. You could say, from our standpoint, I am examining errors of commission this week, whereas last week I examined errors of omission.

Today, I wish to refer to the use of revenue-raising offsets in the budget context. As any budgeteer can tell you, the budget resolution is not a law. It doesn't amend the Internal Revenue Code or Medicare law or appropriations. The budget resolution is like a blueprint for a building. The actual construction of tax and spending policies will occur later on this year.

The budget resolution is, however, critical to actual tax, actual spending, and actual deficit decisions the Congress will undertake. The matter of offsets is critical in this respect: If additional spending is proposed in the resolution without real offsets, then deficits are more likely. Likewise, if popular tax relief is proposed but not offset with real proposals, then deficits could appear and be larger—though, on this last point, the track record of the last 4 years shows tax relief grew the economy and record levels of Federal revenue came into the Treasury as a direct result.

My basic point is that if a proposed offset is not realistic and the proponents succeed, budget discipline could be undermined. In other words, phony offsets, if incorporated into the budget, can lead to deficits.

Today, I am just going to follow the numbers. Just follow the numbers. I am not going to make any judgments or make any assumptions about the revenue-raising proposals. I am going to analyze these proposals strictly from a fiscal standpoint.

I analyze two categories of offsets from the standpoint of whether the budget arithmetic adds up, and I am going to examine last year's record of the Democratic leadership on offsets but look at it as if they were in control at the time. It is not a pretty picture.

I am going to take a look at proposed offsets from a series of amendments, real amendments that were debated here on the floor of the Senate during last year's budget resolution debate. During that debate, virtually all Democratic members had a common theme in their purported offsets for their amendments to this resolution. That purported theme was that they would close tax loopholes to pay for whatever popular spending program they wanted to propose. Closing corporate tax loopholes was the common refrain to pay for spending.

I will list the amendments and the popular spending proposals:

Senator KENNEDY, Vocational Education and Pell Grants;  
Senator AKAKA, Veterans Medical Services;  
Senator MURRAY, Community Block Grants;  
Senator STABENOW, Emergency Responders;  
Senator MENENDEZ, Port Security;  
Senator BYRD, Amtrak;  
Senator REED of Rhode Island, LIHEAP;  
Senator Sarbanes, Corps of Engineers and other Federal services;  
Senator DORGAN, Native American programs;  
Senator STABENOW, Veterans' Health Care;  
Senator AKAKA, Title I Education Grants;  
and  
Senator LINCOLN, Agriculture.

These are all here, and more than what I gave are here.

Mr. President, at this point I ask unanimous consent that a list of these amendments by vote and by amendment number, so that they are there for people who aren't listening to what I am saying to consider, be printed in the RECORD.

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

#### PAID FOR BY CLOSING TAX LOOPHOLES

Vote #39 Kennedy Amendment, No. 3028 Vocational Education and Pell Grants; Vote #41 Akaka Amendment, No. 3007 Veterans Medical Services; Vote #43 Murray Amendment, No. 3063 Community Block Grants; Vote #45 Stabenow Amendment, No. 3056 Emergency Responders; Vote #47 Menendez Amendment, No. 3054 Port Security; Vote #51 Byrd Amendment, No. 3086 Amtrak; Vote #57 Reed Amendment, No. 3074 LI-HEAP; Vote #60 Sarbanes Amendment, No. 3103 Corps of Engineers and Other Federal Services; Vote #61 Dorgan Amendment, No. 3102 Native American Programs; Vote #63 Stabenow Amendment, No. 3141 Veterans Health Care; Vote #64 Akaka Amendment, No. 3071 Title I Education Grants; Vote #66 Lincoln Amendment, No. 3106 Agriculture.

Mr. GRASSLEY. Mr. President, as you can see, the proposed spending is popular and has a nice political edge. Democrats could record themselves as voting for the amendment, and they could criticize Republicans for voting against those amendments. From a political calculation perspective, these were profitable efforts on the part of the Democratic leadership. The fiscal consequences, however, were another story.

If Democrats had been in the majority, as they are now, the fiscal effect of these amendments would have been a very big problem, and here is why. One-time spending increases, even if for 1 year, are built into the CBO baseline, and they are built in forever. This is explicitly the case for increases in discretionary spending. It is also implicitly the case with entitlement spending. If anyone disputes that point, I would ask them to show me the last time we reversed new entitlement spending. It just never happens around here is the best thing to say.

Let's take a look at the Kennedy amendment on vocational education and Pell grants to which I have referred. The amendment was purported

to be \$6.3 billion, but that was for 1 fiscal year. That \$6.3 billion, if adopted, would probably be extended in later years. It is in the baseline. So Senator KENNEDY found his offset by closing \$6.3 billion in what he referred to as corporate tax loopholes. I am not going to find fault with closing those tax loopholes. I have been involved in things like that for a long period of time, and successfully so. The fiscal and political effect, though, of Senator KENNEDY's amendment was to identify specific popular spending and offset it with a nondefined tax increase. From a realistic standpoint, Senator KENNEDY's amendment identified less than 10 percent of the gross spending burden it would have placed on future budgets to the extent the unspecified revenue offset was duplicative or not realistic. The real effect was that the \$6.3 billion additional spending would have been added to the budget for that fiscal year.

All 12 of these listed amendments used the same undefined offset.

Several Members referred to revenue raisers in a Democratic substitute amendment to the 2005 Tax Relief Reconciliation bill, and they kept trying to spend the same money over and over again. Let's take a look at the list of revenue raisers in the substitute amendment.

Mr. President, I ask unanimous consent that a Joint Committee on Taxation estimate of the revenue offsets to the 2005 substitute be printed in the RECORD.

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

*Inventory of Specified Democrat Revenue Offsets*

[In billions over 5 years]

Gross Revenue Available from Democratic Substitute	\$53.6
Less Enacted Offsets	-9.3
Less Small Business Tax Relief Bill Offsets	-8.7
Net Available Democratic Offsets	35.6
Source: Joint Committee on Taxation	

*Recap of Democratic Revenue Raisers and Spending Proposals*

[In billions over 5 years]

Net Available Democratic Revenue Offsets	\$35.6
Less Cost of Democratic Spending Amendments	-105.2
Net Cost of Democratic Spending Amendments	-69.6

Source: Joint Committee on Taxation

Mr. GRASSLEY. That substitute amendment is an overinclusive inventory of offsets. I say "overinclusive" because it included the universe of revenue raisers that the Democratic caucus supported. Republicans supported many, but not all, of these offsets.

Joint Tax scored these revenue raisers during last year's budget debate. According to the Joint Tax experts, that universe of Senate offsets raised \$53.6 billion over 5 years. That is this chart right here: \$53.6 billion. At that time, I noted that the budget resolution assumed several billion in revenue raisers to cover part of the reconciliation bill. Indeed, in the reconciliation conference, we used eight of these revenue raisers. They accounted for about \$9 billion—and I should say only \$9 billion over 5 years. I had hoped to use additional raisers accounting for about \$7.5 billion over 5 years, but the House rejected that, and we then found some offsets someplace else. So we will take a look at them.

If you account for the revenue offsets left over, you can subtract out another 10 revenue-raising proposals that are in the Senate's small business minimum wage bill. Those revenue raisers—and those are things which had just been before the Senate—those revenue raisers included \$8.7 billion over 5 years. That is this figure here.

Of the raisers in the 2005 substitute amendment, about \$18 billion of those were enacted or are in play in discussions between the House and the Senate. So if we review the Senate Democratic inventory of identified as well as scored revenue raisers and net out current law and Senate-passed tax legislation, we find 18 revenue proposals available. These are proposals the Democratic caucus has advocated that are left over. They raise approximately \$36 billion over 5 years.

Everyone should know there are revenue raisers in that total I just recited that the administration doesn't support. You don't have to let that detract you from it, but those would be issues which would be subject to, I suppose, a Presidential veto.

Let's forget that for the moment. There are many in this total that the House and Senate Republicans don't support. As we have found in the small business tax relief discussions, House Democrats aren't keen on some of these proposals either. Nevertheless, to bend over backward and to be fair to the Senate Democratic leadership, I am going to tally the proposals they have supported as a caucus.

Let me repeat the total corporate loophole closers and other offsets Democrats have defined. It is \$36 billion over 5 years. Put another way, I would like to say it is only \$36 billion over 5 years, but I want you to see what they want to use that \$36 billion for—presumably to cover a lot of other expenditures they can't do because the numbers don't allow it. That total of \$36 billion, then, provides a ceiling of offsets to compare to the spending amendments.

Let's go back and match the spending amendments with the universe of Democratic revenue raisers. The revenue raised is a far cry from the cumulative demand of the amendments that were filed. The amendments that have been filed that propose to use those tax loophole closers as offsets total \$105 billion in new spending. So the Senate Democrats propose \$36 billion in revenue raisers that were supposed to offset \$105 billion in new spending, but it doesn't add up. That means the spending exceeded revenue raisers by \$69 billion.

Mr. President, I ask unanimous consent that a list of the Democratic amendments to the fiscal year 2007 budget resolution be printed in the RECORD.

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

**\$ IMPACT OF DEMOCRAT AMENDMENTS TO THE FY 2007 BUDGET RESOLUTION****Tax Increases in Democrat Amendments**

#	Description	Sponsor	Party	2007	2008	2009	2010	2011	2007-2011
3001	Corporate tax loopholes	Nelson	D	0.975	1.037	0.792	0.826	0.861	4.491
3007	Corporate tax loopholes	Akaka	D	1.350	0.135	0.008	0.002	0.000	1.493
3016	Tax loopholes	Kennedy	D	2.378	2.123	0.549	0.111	0.025	5.186
3020	Eliminate tax shelters	Salazar	D	0.808	1.130	1.273	1.430	1.634	6.275
3021	Tax increases	Salazar	D	0.152	0.089	0.102	0.090	0.095	0.508
3022	Tax havens	Salazar	D	0.100	0.770	2.400	2.100	2.000	7.370
3023	Tax increases	Salazar	D	0.007	0.002	0.001	0.000	0.000	0.010
3024	IRS collection improvements	Salazar	D	0.153	0.808	0.178	0.191	0.205	1.535
3028	Corporate tax loopholes	Kennedy/Collins	D	1.479	3.988	0.634	0.206	0.019	6.326
3029	Corporate tax loopholes	Dayton	D	0.270	8.911	4.050	0.270	0.000	13.501
3034	Tax increases	Lieberman	D	2.151	2.700	1.729	1.039	0.203	7.822
3037	Corporate tax loopholes	Lautenberg	D	1.230	0.000	0.000	0.000	0.000	1.230
3039	Superfund	Bingaman	D	1.689	1.654	1.454	1.152	1.284	7.213
3042	Tax increases	Biden	D	1.194	2.835	4.362	5.384	5.400	19.175
3044	Corporate tax loopholes	Akaka	D	0.070	0.080	0.070	0.050	0.040	0.310
3046	Corporate tax loopholes	Biden	D	0.138	0.460	0.748	0.978	1.150	3.474
3047	Corporate tax loopholes	Lincoln	D	4.500	3.300	0.000	0.000	0.000	7.800
3054	Corporate tax loopholes	Menendez	D	0.704	0.517	0.445	0.284	0.000	1.930
3056	Corporate tax loopholes and tax gap	Stabenow	D	1.000	3.700	3.100	2.200	1.000	11.000
3058	Corporate tax loopholes	Baucus	D	0.880	1.800	0.800	0.240	0.080	3.800
3062	Corporate tax loopholes	Byrd	D	0.032	0.035	0.036	0.036	0.037	0.176
3063	Corporate tax loopholes	Murray	D	0.026	0.416	0.546	0.182	0.065	1.235
3064	Corporate tax loopholes	Clinton	D	0.010	0.345	0.060	0.010	0.010	0.435
3097	Corporate tax loopholes	Feinstein	D	0.111	0.199	0.055	0.012	0.003	0.380
3069	Corporate tax loopholes	Murray	D	0.213	0.053	0.000	0.000	0.000	0.266
3070	Corporate tax loopholes	Murray	D	0.024	0.006	0.000	0.000	0.000	0.030
3071	Corporate tax loopholes	Akaka	D	0.180	4.860	0.840	0.120	0.000	6.000
3072	Corporate tax loopholes	Kerry	D	0.121	0.030	0.000	0.000	0.000	0.151
3074	Corporate tax loopholes	Reed	D	2.489	0.763	0.066	0.000	0.000	3.318
3075	Corporate tax loopholes	Levin	D	0.056	0.118	0.096	0.066	0.000	0.334
3076	Corporate tax loopholes	Levin	D	0.022	0.003	0.003	0.000	0.000	0.028
3077	Corporate tax loopholes	Levin	D	0.030	0.111	0.093	0.066	0.000	0.300
3080	AMT	Kerry	D	-3.272	-16.248	6.923	8.225	1.309	-5.063
3081	Corporate tax loopholes	Salazar	D	0.152	0.000	0.000	0.000	0.000	0.152
3082	Corporate tax loopholes	Murray	D	0.675	2.756	2.820	2.836	2.840	11.927
3086	Corporate tax loopholes	Byrd	D	0.550	0.000	0.000	0.000	0.000	0.550
3088	Tax loopholes	Leahy	D	0.005	0.011	0.010	0.008	0.006	0.040
3089	Corporate tax loopholes	Salazar	D	0.025	0.030	0.030	0.010	0.005	0.100
3090	Tax loopholes	Clinton	D	0.021	0.042	0.011	0.002	0.000	0.076
3091	Tax loopholes	Schumer	D	0.500	0.000	0.000	0.000	0.000	0.500
3092	Tax policy	Schumer	D	-6.992	-36.366	-33.559	78.917	0.000	0.000
3095	Repeal energy incentives	Biden	D	0.434	0.732	0.582	0.539	0.422	2.709
3097	Corporate tax loopholes	Dayton	D	0.230	7.591	3.450	0.230	0.000	11.501
3101	Repeal tax subsidies	Dorgan	D	0.500	1.100	1.200	1.400	1.500	5.700
3102	Corporate tax loopholes	Dorgan	D	0.285	0.197	0.230	0.263	0.302	1.277
3103	Corporate tax loopholes	Sarbanes	D	1.718	0.699	0.320	0.116	0.058	2.911
3104	Corporate tax loopholes	Murray	D	0.675	2.756	2.820	2.836	2.840	11.927
3105	Millionaires tax	Boxer	D	0.015	0.435	0.225	0.075	0.015	0.765
3106	Corporate tax loopholes	Lincoln	D	1.177	0.439	0.221	0.107	0.057	2.001
3112	Tax increases	Landrieu	D	0.516	0.221	0.000	0.000	0.000	0.737
3113	Tax increases	Landrieu	D	0.038	0.084	0.075	0.075	0.030	0.300
3115	Corporate tax loopholes	Clinton-Reid	D	0.225	0.084	0.023	0.010	0.002	0.344
3129	Corporate tax loopholes	Schumer	D	0.283	0.353	0.071	0.000	0.000	0.707
3130	Corporate tax loopholes	Schumer	D	0.009	0.031	0.065	0.095	0.077	0.277
3133	Tax withholding	Conrad	D	5.100	0.100	0.200	0.200	0.200	5.800
3137	Corporate tax loopholes	Lautenberg	D	1.230	0.000	0.000	0.000	0.000	1.230
3141	Millionaires tax	Stabenow	D	6.900	18.500	22.200	27.000	31.800	104.200
3143	Tax increases	Kerry	D	0.592	1.619	2.188	2.685	3.271	10.355
3145	Corporate tax loopholes	Obama	D	0.090	0.060	0.045	0.046	0.047	0.288
3146	Corporate tax loopholes	Obama	D	0.005	0.001	0.000	0.000	0.000	0.006
3147	Corporate tax loopholes	Clinton	D	0.026	0.013	0.001	0.000	0.000	0.040
3158	Tax loopholes	Dodd	D	2.230	3.084	1.024	0.330	0.000	6.668
3159	Tax increases	Kennedy	D	2.392	2.138	0.534	0.097	0.025	5.186

TOTAL TAX INCREASE

40.874 31.418 36.197 139.127 58.697 306.313

## Spending Increases in Democrat Amendments

#	Description	Sponsor	Party	2007	2008	2009	2010	2011	2007-2011
3001	Survivor Benefit Plan (050)	Nelson	D	BA 0.975	1.037	0.792	0.826	0.861	4.491
	Mandatory		OT	0.975	1.037	0.792	0.826	0.861	4.491
3007	Veterans medical services	Akaka	D	BA 1.500					1.500
	Discretionary		OT	1.350	0.135	0.006	0.002	0.000	1.493
3016	Research programs	Kennedy	D	BA 5.226					5.226
	Discretionary		OT	2.378	2.123	0.549	0.111	0.025	5.186
3020	LWCF	Salazar	D	BA 0.100					0.100
	Discretionary		OT	0.025	0.030	0.030	0.010	0.005	0.100
3021	PILT	Salazar	D	BA 0.152					0.152
	Discretionary		OT	0.152					0.152
3022	Wildland fire management	Salazar	D	BA 0.072					0.072
	Discretionary		OT	0.040	0.022	0.011			0.073
3023	Interoperable communications	Salazar	D	BA 0.010					0.010
	Discretionary		OT	0.007	0.002	0.001			0.010
3024	National Renewable Energy Laboratory	Salazar	D	BA 0.172					0.172
	Discretionary		OT	0.077	0.069	0.017	0.009		0.172
3028	Education programs	Kennedy	D	BA 6.326					6.326
	Discretionary	Collins	OT	1.479	3.988	0.634	0.206	0.019	6.326
3029	IDEA	Dayton	D	BA 13.501					13.501
	Discretionary		OT	0.270	8.911	4.050	0.270		13.501
3034	Homeland security	Lieberman	D	BA 7.977					7.977
	Discretionary		OT	2.151	2.7	1.729	1.039	0.203	7.822
3037	Aviation security	Lautenberg	D	BA 1.230					1.230
	Discretionary		OT	1.230					1.230
3038	Eliminate Office of Dynamic Analysis	Clinton	D	BA -0.001					-0.001
	Discretionary		OT	-0.001					-0.001
3039	Energy programs	Bingaman	D	BA 4.049					4.049
	Discretionary		OT	1.972	1.535	0.365	0.177		4.049
3042	Homeland security	Biden	D	BA 5.775	5.400	5.400	5.400	5.400	27.375
	Discretionary		OT	1.194	2.835	4.362	5.384	5.400	19.175
3044	Filipino veterans	Akaka	D	BA 0.070	0.080	0.070	0.050	0.040	0.310
	Mandatory		OT	0.070	0.080	0.070	0.050	0.040	0.310
3046	COPS	Biden	D	BA 1.150	1.150	1.150	1.150	1.150	5.750
	Discretionary		OT	0.138	0.460	0.748	0.978	1.150	3.474
3047	Refundable tax credits	Lincoln	D	BA 4.500	3.300				7.800
	Mandatory		OT	4.500	3.300				7.800
3054	Port security	Menendez	D	BA 0.965					0.965
	Discretionary		OT	0.352	0.259	0.223	0.132		0.966
3056	Interoperable communications	Stabenow	D	BA 5.000					5.000
	Discretionary		OT	0.500	1.850	1.550	1.100		5.000
3058	NSF	Baucus	D	BA 4.000					4.000
	Discretionary		OT	0.880	1.800	0.800	0.240	0.080	3.800
3062	Mine safety	Byrd	D	BA 0.036	0.036	0.037	0.037	0.038	0.184
	Discretionary		OT	0.032	0.035	0.036	0.036	0.037	0.176
3063	CDBG	Murray	D	BA 1.300					1.300
	Discretionary		OT	0.026	0.416	0.546	0.182	0.065	1.235
3064	Even Start	Clinton	D	BA 0.225					0.225
	Discretionary		OT	0.007	0.182	0.031	0.005	0.003	0.228
3067	NIH	Feinstein	D	BA 0.390					0.390
	Discretionary		OT	0.111	0.199	0.055	0.012	0.003	0.380
3069	Coast Guard	Murray	D	BA 0.266					0.266
	Discretionary		OT	0.213	0.053				0.266
3070	Coast Guard	Murray	D	BA 0.030					0.030
	Discretionary		OT	0.024	0.006				0.030
3071	Title I	Akaka	D	BA 3.000					3.000
	Discretionary		OT	0.090	2.430	0.420	0.060		3.000
3072	SBA	Kerry	D	BA 0.151					0.151
	Discretionary		OT	0.121	0.030				0.151
3074	LIHEAP	Reed	D	BA 3.318					3.318
	Discretionary		OT	2.489	0.763	0.066			3.318
3075	Borders	Levin	D	BA 0.334					0.334
	Discretionary		OT	0.058	0.116	0.066			0.238
3076	Border patrol	Levin	D	BA 0.028					0.028
	Discretionary		OT	0.022	0.003	0.003			0.028
3077	Borders (DRAFTED WRONG)	Levin	D	BA 0.300					0.300
	Discretionary		OT	0.030	0.111	0.093	0.066	0.000	0.300
3081	PILT	Salazar	D	BA 0.152					0.152
	Discretionary		OT	0.152					0.152

3082 ProGAP	Murray	D	BA	1.412	1.415	1.423	1.433	1.430	7.113
Mandatory			OT	0.339	1.385	1.417	1.425	1.432	5.998
3086 Amtrak	Byrd	D	BA	0.550					0.550
Discretionary			OT	0.550					0.550
3088 Bulletproof vests	Leahy	D	BA	0.041					0.041
Discretionary			OT	0.005	0.011	0.010	0.008	0.006	0.040
3089 LWCF	Salazar	D	BA	0.100					0.100
Discretionary			OT	0.025	0.030	0.030	0.010	0.005	0.100
3090 CDC	Clinton	D	BA	0.079					0.079
Discretionary			OT	0.021	0.042	0.011	0.002	0.000	0.076
3091 Port security	Schumer	D	BA	0.500					0.500
Discretionary			OT	0.500					0.500
3097 IDEA	Dayton	D	BA	11.501					11.501
Mandatory			OT	0.203	7.591	3.450	0.230	0.000	11.474
3102 Tribal programs	Dorgan	D	BA	1.000					1.000
Discretionary			OT	0.299	0.385	0.154	0.126	0.015	0.979
3103 Natural resources	Sarbanes	D	BA	2.912					2.912
Discretionary			OT	1.718	0.699	0.320	0.116	0.058	2.911
3104 ProGAP	Murray	D	BA	1.412	1.415	1.423	1.433	1.430	7.113
Mandatory			OT	0.339	1.385	1.417	1.425	1.432	5.998
3105 21st Century Comm Learning Centers	Boxer	D	BA	0.750					0.750
Discretionary			OT	0.015	0.435	0.225	0.075		0.750
3106 Agriculture	Lincoln	D	BA	2.029					2.029
Discretionary			OT	1.177	0.439	0.221	0.107	0.057	2.001
3112 Corps	Landrieu	D	BA	0.737					0.737
Discretionary			OT	0.516	0.221				0.737
3113 FHA	Landrieu	D	BA	0.300					0.300
Mandatory			OT	0.036	0.084	0.075	0.075	0.030	0.300
3115 Unintended pregnancy	Clinton-Reid	D	BA	0.347					0.347
Discretionary			OT	0.225	0.084	0.023	0.010	0.002	0.344
3129 Firefighter assistance	Schumer	D	BA	0.707					0.707
Discretionary			OT	0.283	0.353	0.071			0.707
3130 GSA	Schumer	D	BA	0.308					0.308
Discretionary			OT	0.009	0.031	0.065	0.095	0.077	0.277
3133 Avian flu	Conrad	D	BA	5.000					5.000
Discretionary			OT	1.000	2.800	0.800	0.300		4.900
3137 TSA fees	Lautenberg	D	BA	1.230					1.230
Discretionary			OT	1.230					1.230
3141 Veterans health as mandatory	Stabenow	D	BA	6.900	16.500	22.200	27.000	31.600	104.200
Mandatory			OT	6.900	16.500	22.200	27.000	31.600	104.200
3143 Military healthcare	Kerry	D	BA	0.735	1.862	2.322	2.816	3.424	11.159
Mandatory			OT	0.592	1.619	2.188	2.685	3.271	10.355
3145 Child tax credit	Obama	D	BA	0.145	0.129				0.274
Mandatory			OT	0.145	0.129				0.274
3146 DOJ	Obama	D	BA	0.006					0.006
Discretionary			OT	0.005	0.001				0.006
3147 Alzheimers	Clinton	D	BA	0.041					0.041
Discretionary			OT	0.026	0.013	0.001			0.040
3158 Children and families	Dodd	D	BA	3.334					3.334
Discretionary			OT	1.115	1.542	0.512	0.165	0.000	3.334
3159 Science	Kennedy	D	BA	5.226					5.226
Discretionary			OT	2.392	2.138	0.534	0.097	0.025	5.186
3170 IRS	Conrad	D	BA	0.363					0.363
Discretionary			OT	0.340	0.014	0.009			0.363
3171 Mine Safety	Byrd	D	BA	0.037	0.038	0.041	0.043	0.046	0.205
Discretionary			OT	0.033	0.037	0.040	0.042	0.045	0.197
DISCRETIONARY SUBTOTAL				BA	92.031	8.624	6.628	6.630	118.547
				OT	29.051	40.338	19.417	11.172	107.258
MANDATORY SUBTOTAL				BA	27.950	25.738	28.230	33.558	154.261
				OT	14.099	33.110	31.609	33.716	151.200
TOTAL SPENDING INCREASE				BA	119.981	32.362	34.858	40.188	272.808
				OT	43.150	73.448	51.026	44.888	258.458

Mr. GRASSLEY. Mr. President, this list was prepared by analysts and was based upon filed amendments printed in the CONGRESSIONAL RECORD. I think it is interesting that only one filed amendment on this list would decrease taxes over 5 years, and only one amendment would result in decreased spending over 5 years. The amendment decreasing spending was filed by New York's junior Senator and would reduce spending by \$1 million. That is one-thousandth of a billion dollars.

Put another way, if you subtract the \$36 billion from the \$105 billion in new spending proposed, it means the other side's amendments were short \$69 billion—short \$69 billion. Right here. This figure. This money proposed for offsets, add up all of the amendments put before the Senate, and you come out short. Revenue neutrality? No. Budget neutrality? No.

Now, that \$69 billion needs to come from someplace. If the other side had prevailed, it would have wiped out the tax relief of last year's budget, including what we do to keep more Americans from paying that horrible tax, the alternative minimum tax. You can't have it both ways. Either the other side, if they had prevailed, would have added \$69 billion in deficit spending or they would have gutted the tax relief they claim to support.

Budgets are about choices. In this case the choices are clear. If the Democratic leadership would have controlled the Senate last year, we would have no tax relief in that budget or we would have added \$69 billion in deficit spending. Neither choice would be the right choice from the standpoint of the American people.

Defining offsets is very important. It is very important because we need real numbers if we are going to have intellectually honest budgeting. My analysis of corporate loophole closers and other revenue-raising proposals shows the Democratic caucus has supported at most \$36 billion in specific revenue-raising proposals. By the way, that is about the revenue loss for last year's AMT patch. So the alternative minimum tax would have hit another 7 or 8 million Americans.

Using unspecified revenue-raising proposals is not realistic. If Democrats intend to live by pay-go, short for "pay as you go," the Finance Committee will need those revenue-raising proposals to handle a portion—and just a portion—of the demand of the tax system.

There are two other categories of revenue-raising proposals identified by the Democratic leadership. One is repealing tax relief for higher income taxpayers. The other is reducing or closing the tax gap. I will talk about the tax gap in a later speech.

When folks in the Democratic leadership talk about raising taxes on higher income taxpayers, it sounds as if all fiscal problems can be solved as long as you want to look down the road. Liberal think tanks and sympathetic

voices in the east coast media tend to echo that sentiment. As a matter of intellectual honesty in budget debates, we ought to have an idea of how much revenue is there. Since the most popular proposal is to repeal the bipartisan tax relief for higher income taxpayers, I have asked the Joint Tax Committee to provide updated estimates of those proposals—such as the corporate loophole closer. I do not expect the revenue would cover the spending demands. I was pleased to see the Budget Committee chairman make a public comment last week that seemed to address these proposals. According to the March 1, 2007 edition of Congress Daily AM, the chairman indicated he intended to put forward a budget with "no tax rate increases." I will have to see the budget resolution and hear the chairman's explanation, but I read that comment to mean the Democratic leadership will not, at a minimum, propose to roll back current law tax rates.

This would be especially interesting in light of the so-called millionaire's tax amendment put forward in the past by members of the chairman's party. The millionaire's tax amendment filed for the fiscal year 2007 budget would have increased taxes by about \$105 billion. Of course, those same amendments spent that money, so deficit reduction would not have been received.

Today I have examined the question of revenue-raising offsets. The inventory of available, defined, specific revenue-raising offsets is relatively small. Last year, Democratic amendments overspent the available revenue offsets by \$69 billion. The Democratic leadership has indicated a desire to apply pay-go, pay as you go, to the current law tax relief. If pay-go is to be observed with respect to the alternative minimum tax and other popular expiring tax relief provisions, the Democratic leadership will need those revenue raisers and even more to offset the revenue lost from these time-sensitive provisions.

When we start to examine and debate the budget resolution, we will need to use intellectually honest numbers. Using the undefined corporate loophole closer is fiscally dangerous. It enables even more spending at a time when Government is at record levels as far as real dollars. Runaway spending is at the root of our current or future fiscal problems. Using phony revenue-raising offsets sets up two negative fiscal outcomes, an undefined tax increase and/or deficit spending.

All Members, whether Republican or Democrat, ought to agree to be transparent with all these numbers and all these figures in the amendments that are posed in the upcoming budget debate.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I ask unanimous consent I be allowed to pro-

ceed for 15 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Idaho is recognized.

(The remarks of Mr. CRAIG relating to the introduction of S. 815 are printed in today's RECORD under "Introduced Bills and Joint Resolutions.")

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. STABENOW. Madam President, I rise today to support the Improving America Security Act of 2007, the legislation in front of us. It will put us on a path of more security for the future by implementing the unfinished recommendations of the 9/11 Commission. I commend all of those involved in this important effort.

As I came to speak on the floor in support of the legislation we have been working on for the last couple of weeks, I find myself needing to express great concern about the place in which we find ourselves at this point—unable to move forward with the final bill and the relevant 9/11 Commission amendments that have been offered because of an effort by the Senate Republican leader to offer a wide-ranging number of unrelated amendments to this bill. So we find ourselves now stopped and waiting to figure out a way to resolve this effort.

The families who lost loved ones 5½ years ago have been waiting for the Congress to act. The 9/11 Commission report was released. After it was released, I assumed we would immediately take that document and begin to move forward aggressively because we all want safety for our families. We all live in America, and we are all concerned about vulnerabilities and risks and what we need to be able to do to keep our families safe and the country safe.

Unfortunately, things did not move under the former Congresses. We now find ourselves in a situation where, again, we are stalled because of a set of unrelated issues that have come up. I wish to share for the RECORD the deep concern of family members who lost loved ones on 9/11 and who have written a letter to the distinguished Republican leader of the Senate. I think it expresses their grave concern about where we are right now. They are calling on us to move forward and act.

This reads:

DEAR SENATOR MCCONNELL: As family members who lost loved ones on 9/11, we support full implementation of the 9/11 Commission recommendations. We are writing out of grave concern that your recent introduction of highly provocative, irrelevant amendments will jeopardize the passage of S. 4. It

is inconceivable that anyone in good conscience would consider hindering implementation of the 9/11 Commission recommendations, delaying much-needed homeland security improvements. We strongly disagree with these divisive procedural tactics.

Just as the Iraq war deserves separate debate, so do each of the amendments you offered. S. 4 should be a clean bill and debate should conclude this week with a straight up and down vote. Each day that passes without implementation of the remaining 9/11 Commission recommendations, the safety and security of our nation is at risk.

Tactics such as those you are contemplating, which endanger the 9/11 bill, send a signal to America that your priority is partisan politics, not protecting America against terrorism. Both parties must work together to pass this critical legislation.

We, the undersigned, understand all too well the risk of failure to secure our nation.

Respectfully,

CAROL ASHLEY,

*Mother of Janice, 25,  
Member, Voices of  
September 11th.*

MARY FETCHET,

*Mother of Brad, 24,  
Founding Director  
and President,  
Voices of September  
11th.*

BEVERLY ECKERT,

*Widow of Sean Rooney,  
50, Member,  
Families of September 11.*

CARIE LEMACK,

*Daughter of Judy Larocque, 50,  
Co-founder and President,  
Families of September 11.*

We know the job that needs to get done. I commend our Senate majority leader for making the wise determination, out of respect for these families, not to proceed with amendments relating to Iraq, which we all care deeply about. We want to have that debate on the policies and support for our troops and future direction as it relates to Iraq.

But the distinguished majority leader made the determination not to proceed on this bill because the families, the communities, and the country have waited too long for it to pass. So I think it is very unfortunate that we have had to get to this point, but it is very important that we pass a bill of tremendous significance.

I commend Chairman LIEBERMAN and all of the members of the committee for their leadership. I commend particularly Senator LIEBERMAN for his conviction to bring these issues to the Senate and for hanging in there and trying to get this done. The 9/11 Commission did a great service to our country by asking tough questions about the 9/11 attacks and then making recommendations to keep us safe in the future. The 9/11 Commission not only gave a detailed explanation of how the attacks happened but also gave Congress and the administration detailed recommendations in how to fix our vulnerabilities and prevent future attacks. For that, we are grateful for their service.

In December 2005, a group led by former members of the 9/11 Commission

released a report card that overwhelmingly gave the administration and Congress failing grades for their poor implementation of the 9/11 Commission recommendations. This legislation is intended to change those failing grades to passing grades and to make us more secure.

The members of the commission gave the Government a D for improving checked bag and cargo screening. This bill requires all cargo and passenger aircraft to be screened and dedicates funding for the screening of checked baggage.

The Government also received Ds for creating incentives for information sharing and increasing Government-wide information sharing. This legislation makes several changes to information and intelligence sharing urged by the Commission. The bill establishes incentives for Government-wide information sharing and makes permanent the information sharing environment program, which will expire next month. The bill also creates the Interagency Threat Assessment and Coordination Group, which will facilitate the production and dissemination of Federal intelligence products to other Federal agencies and to State, local, and tribal governments.

The former Commissioners gave the Government another D for the lack of progress on intelligence oversight reform. However, the days of Congress giving President Bush a free pass are over, and this legislation increases Congress's oversight of the intelligence community and gives the intelligence community greater freedom to submit information to Congress, without approval by an executive branch officer.

One appalling lack of progress has been in the area of first responder communications interoperability. The 9/11 Commissioners gave the Government an F for failing to provide an adequate radio spectrum for first responders. This lack of progress is appalling to me because of the shortcomings the Commission identified in this area.

The 9/11 Commission report outlined the numerous communications problems first responders have had as they have tried to save lives. The report detailed the problem the police officers and firefighters in New York faced because they were on different radio systems. Over 50 different public safety organizations from Maryland, Virginia, and the District of Columbia reported to the Pentagon to help, but they could not talk to each other.

The 9/11 Commission concluded that:

The inability to communicate was a critical element at the World Trade Center, Pentagon, and Somerset County, Pennsylvania, crash site where multiple agencies and multiple jurisdictions responded. The occurrence of this problem at 3 very different sites is strong evidence that compatible and adequate communications among public safety organizations at the local, State, and Federal levels remains an important problem.

The 9/11 Commission published its final report in July 2004, but the men and women in the first responder com-

munity knew of the communications difficulties before 9/11.

Not long after 9/11, I traveled around Michigan and held a number of different townhall meetings. Over and over again, I heard the same thing from our police officers and firefighters, our emergency responders. In the 5 years since the September 11 attacks, one of the top requests for support I receive every year from the communities in Michigan is for interoperable communications equipment. Nearly every time I meet with police and firefighters and emergency medical personnel, they bring up this issue.

The 9/11 Commission is not alone in the assessment of this problem. In June of 2004, a U.S. Conference of Mayors survey found that 94 percent of cities didn't have interoperable capabilities between police and firefighters and emergency workers; 60 percent of cities didn't have interoperable capability with the State emergency operation center in their State.

It has been over 5 years and we now are seeing this come forward in this important bill. I commend everybody involved in this legislation for putting in the first grant program for interoperability. This is a program that would be dedicated to improving communications between our first responders and would authorize \$3.3 billion over the next 5 years to begin to get this right.

Our committee that has brought this forward has done an excellent job of presenting a package for us of which we can all be proud. It is a bipartisan effort. I hope we are going to see us move beyond this stalemate able to get the job done. The people of my State, and each of our States, are counting on us, and certainly the families who have suffered such a grave loss in the attacks on our country are counting on us to focus on the job in front of us and get it done.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

(The remarks of Mr. SANDERS pertaining to the introduction of S. 818 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

AMENDMENT NO. 313

Mr. DORGAN. Madam President, I have an amendment pending, as my colleagues know, that I cannot get a vote on. I don't know whether the other side will relent and give us a vote on the amendment. I offered it a week ago today. The amendment deals with the issue of al-Qaida. This bill is about

the recommendations by the 9/11 Commission. It has been, I am told, 2,002 days since 9/11/2001. I was sitting in the Capitol that morning at a Democratic leadership meeting on that side of the Capitol with windows that looked out to the east.

We saw first on the television set the airplanes that attacked the World Trade Center. We saw the second plane fly into the second building of the World Trade Center. We then saw black smoke rising from the Pentagon that morning. Then this building was evacuated.

That has been a long while ago. Yet it seems like only yesterday. We looked up into the real bright blue sky that morning and saw F-16 fighter jets flying air cover over this Nation's capital.

We discovered later, because they boasted about it, that it was al-Qaida—Osama bin Laden, al-Zawahiri—who attacked this country and murdered several thousand of America's citizens. They boasted about it. They sent us videotapes, audiotapes telling us they were the ones who attacked our country.

Well, it is not 9/11/2001 today. It is a couple of thousand days later. Those who boasted they attacked this country are now living in Pakistan. That does not come from me, that comes from the top terrorist official in our country. In fact, both of the top intelligence chiefs in our country in the last 2 months have said the following, and I will quote them:

Al Qaeda is the terrorist organization that poses the greatest threat to U.S. interests, including to the Homeland.

Think of that. Nearly 6 years after we were attacked by al-Qaida, we are told: The greatest threat to our country—and this is from open testimony before the Senate Select Committee on Intelligence by Mr. Negroponte, the top intelligence head in this country—is al-Qaida.

Here is what he said—this was repeated a couple of weeks ago by his successor:

Al-Qaida leaders "continue to plot attacks against our homeland and other targets with the objective of inflicting mass casualties. And they continue to maintain active connections and relationships that radiate outward from their leaders' secure hideout in Pakistan . . ."

It has been 2,002 days. Those who killed thousands of Americans, those who are now the greatest terrorist threat to our country are living in a secure hideout in Pakistan. I would like to understand what is a higher priority for this country than to eliminate the leadership of al-Qaida, if, in fact, they represent the gravest terrorist danger to America. What is a higher priority?

I offer this amendment with my colleague, Senator CONRAD. Incidentally, we offered and passed an amendment on this subject last fall that got dropped in conference.

This amendment that is fairly simple. It asks the administration, the Di-

rector of National Intelligence, and the Secretary of Defense to give Congress, every 6 months, a classified report telling us three things. First, whether the al-Qaida leadership is still in a secure hideout in Pakistan and, if not, where are they?

Second, tell us where they are, based on your knowledge. Incidentally, as I said, we have had testimony twice now from the top intelligence official in the Government that they are in a secure hideout in Pakistan. Second, whether the countries in which they reside are cooperating with us in our attempt to eliminate the al-Qaida leadership.

Third, our report will require the head of our intelligence and the head of the Department of Defense to tell us what additional resources they need, if they need additional resources, to capture Mr. bin Laden, Mr. Zawahiri, and al-Qaida's leadership.

We are having an aggressive debate in this country about Iraq. We should. It is an unbelievably difficult situation. In the shadow of 9/11, in the shadow of the terrorist threat that emerged immediately from 9/11, we were told by our intelligence community, by the administration, in top secret briefings, that Iraq posed imminent danger to this country and possessed weapons of mass destruction.

It turns out the intelligence was not accurate.

There are many reasons for that, some very troubling. But it turns out the intelligence was wrong. Nonetheless, the President committed troops to battle, and we are in Iraq and have been in that war in Iraq longer than for the Second World War. It is a lengthy period. It has lasted longer than the Second World War.

In fact, the National Intelligence Estimate was just released a couple months ago. A portion has been declassified. It says that most of what is happening in Iraq is sectarian violence. Yes, there are some al-Qaida in Anbar Province, but the bulk of what is happening in Iraq is sectarian violence. Translated, it means there is a civil war going on in Iraq.

That does not surprise anybody. Watch the evening news. Read the newspapers. We understand and see the evidence of this civil war. The question now for our country is, what do we make of a circumstance where we now find ourselves having substantial numbers of American soldiers in the middle of a civil war in Iraq? How do we respond to that? And how do we deal with that?

President Bush, some months ago, presented false choices to our country. He said the issue is just stay the course or cut and run. He said: I am for staying the course and they are for cutting and running—a completely false choice, and he knew it. Later, he said he never said "stay the course," but, in fact, he did many times.

But it was never the proper choice, stay the course or cut and run. The question is, What is a smart choice for

our country? What represents our best interests, the best interests of our troops, the best interests of our own national interest with respect to the country of Iraq?

We are going to leave Iraq. That is not in question. The question is, when and how. The American people are not going to have American soldiers in the middle of civil strife in Iraq for 6 months, 6 years, 16 years. We are leaving Iraq. The question is, how and when, and that is a worthy debate to have. We have soldiers risking their lives.

Our country has asked soldiers to risk their lives for deployments—many of them multiple deployments. Yet the country has not gone to war with those soldiers. We send soldiers to Iraq to fight, and we are told: Go shopping. Soldiers go to war; we go to the mall. This country has not asked to be—excuse me, I should say it differently. No one has asked this country to be engaged in this war. We are told: Do you know what? In this war we should have tax cuts.

In fact, we have already spent somewhere close to \$500 billion on the war—none of it paid for. We send soldiers to war and then are not willing to pay the costs. The cost in lives and treasure for this country is substantial. The question that we are coming to grips with in this Chamber, finally, at long last, is, what do we make of all of this? What kind of strategy do we develop? How do we approach this in a way that begins to decide what makes the best sense for this country's national interest?

We have had many discussions about that. I think we have arrived at some points in that discussion that will make a great deal of sense for this country. But even as we discuss Iraq, which is not the central front in the war on terrorism, we have people coming to the Congress and testifying before our committees and telling us the greatest threat to our country—the greatest threat to our country—is al-Qaida. Then we go home, as we talk about Iraq in the Senate, and we turn on the television set and see that al-Qaida is reconstituting training camps in Pakistan, and we see that al-Qaida is ramping up an opportunity with the Taliban to begin operations in Afghanistan to threaten the Government of Afghanistan.

So what do we make of all of that? Well, there is a giant yawn, it seems to me—just a giant yawn. Nobody cares. Nobody says much about al-Qaida. If this is the greatest terrorist threat to our country, why is it not No. 1 on this country's agenda—eliminating the leadership of al-Qaida?

The President says:

I don't know where bin Laden is. I have no idea and really don't care. It's not that important. It's not our priority.

"I am truly not that concerned about him," the President says.

His intelligence chief comes to us and says, "Al-Qaida is the terrorist organization that poses the greatest

threat to U.S. interests. . . .” and we are not concerned about Osama bin Laden, the man who boasted about murdering thousands of American citizens?

Then we read this in the morning papers:

Senior leaders of Al Qaeda operating from Pakistan have re-established significant control over their once-battered worldwide terror network and over the past year have set up a band of training camps in the tribal regions near the Afghan border, according to American intelligence and counterterrorism officials.

American officials said there was mounting evidence that Osama bin Laden and his deputy, Ayman al-Zawahri, had been steadily building an operations hub in the mountainous Pakistani tribal area of North Waziristan.

How many warnings do we need? How often do we have to be told? Who has to tell us before we understand what are priorities are?

I have offered, with my colleague, Senator CONRAD, a simple amendment saying: Let's keep our eye on the ball. Every 6 months we should receive a classified report to say what is being done about this, where is the leadership of al-Qaida. Are they still in a secure hideout or hideaway in Pakistan? If so, are the leaders of this country helping us to try to eliminate that leadership? What kind of resources are necessary?

The President said some long while ago the issue with respect to terrorism is not just the terrorists but also those who harbor them. If the leadership of al-Qaida is in northern Pakistan, are they being harbored by the Government of Pakistan? Oh, I know, I am worried about President Musharraf. Sure. We all are. But is the Government of Pakistan—reportedly a government that has just made some sort of commitment with the Taliban, sort of a nonaggression pact with the Taliban, a Taliban that is likely protecting and hiding the leadership of al-Qaida—is that in our national interest? I don't think so.

So I offer an amendment, a simple, tiny, little amendment that says: Let's keep our eye on the ball. If this is the greatest threat to our country, why is it not ranked No. 1? Why is it relegated to an “I don't care; I don't know where he is or they are; it does not matter”?

How about deciding this is a priority.

Why are we not able to get a vote on this amendment? Why, after a week, are we not able to get a vote? Why would someone vote against this amendment? Why would someone oppose an attempt by our country to decide this is a priority? Why don't we have a vote and see if there are those who are opposed? I don't know. It is very frustrating. We bring a bill to the floor of the Senate dealing with 9/11.

Madam President, 9/11 was very simple and tragic; 9/11 was the day that a terrorist organization named al-Qaida hijacked airplanes, used those airplanes, full of fuel, as guided missiles, low-tech weaponry, to murder thousands of Americans.

We know who did it. They claimed they did it. They boasted about it. Now we are told by the top intelligence chief in our country we know where they are. And 2,002 days later, they are still there. By the way, we still receive messages from them from time to time. They send an audio tape or a video tape to Al Jazeera, and they speak to us. So they exist. Our intelligence chief says we know they exist and where they are.

The question is, why is this country not doing what it is required to do to deal with the highest and most significant terrorist threat that exists to the United States? I do not understand it.

So the question will be, I guess, in the coming hours, who is blocking this amendment? Why are they blocking this amendment? Why on Earth would anyone oppose such an amendment? Is the U.S. Congress willing to debate these issues, make decisions on these issues? I thought it was the great deliberative body in our country. You come to the floor of the U.S. Senate and exchange views, and you have a debate, a competition of ideas, and you select the best from each rather than the worst of both. That is what I thought this was about. I am enormously proud to be here. This is a great place. But it is enormously frustrating to spend a week on an amendment such as this and then discover that there are people who will decide you cannot have a vote on an amendment. Why? Because they are worried it might make somebody look bad.

This amendment is not about making anybody look bad. It is about turning this country to aim at the greatest terrorist threat that is described by our top intelligence chief and deciding to do something about it.

I come to the floor a third time now talking about this in the context of the other issues of Iraq and other matters we will discuss, including trying to pass the 9/11 bill. I do so recognizing a lot of people have a lot of ideas around here—some good, some bad. We vote on many of them. This is an idea we ought to vote on, and we ought to do it soon.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, let me inquire of the Senator from Maine. The ranking member is here, but the manager of the bill is not here. She has heard my presentation, I guess, three times now and perhaps is long tired of it. But let me ask if there is an opportunity for me to propound a unanimous consent request to get a vote on this amendment. I know I visited with the Senator from Connecticut and with the Senator from Maine yesterday and, I

think, the day before about this amendment.

Could I get some expression from the ranking member of the thinking of the chairman and the ranking member about getting a vote on this amendment?

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, although it appears nothing has been happening today, in fact, there have been extensive negotiations going on behind the scenes with a list of amendments from our side and from the Senator's side. I know for a fact the Senator's amendment is on that list and is part of the discussions that are underway.

But the system of trying to clear these amendments is a very time-consuming one. There are Senators on the Democratic side who have objected to clearing the list and there are Senators on my side of the aisle who have objected to clearing the list.

But I can tell the Senator I personally did ask for the Senator's amendment, as did the manager of the bill, to be added to the list for those where we would try to either clear them through unanimous consent or we would try to get a rollcall vote. I personally have no objection to having a rollcall vote on the Senator's amendment or accepting the Senator's amendment, but we have not yet completed the clearance process. The reason I have remained on the floor is in the hope that clearance will occur. But I will tell the Senator there are problems clearing the joint list on both sides of the aisle.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Madam President, my understanding is my amendment is not on the list from the minority side. I do not know whether that is true or not, but I am told it is not on the list. If it is on the list, I am enormously heartened. As always, my colleague from Maine is very cordial, and I have always enjoyed working with her.

My only inquiry is to try to find a way, after a week, to be on the list so we can move this amendment. I would say to my colleague—and I know she would agree with this—it is often the case, as they say, where appearances are deceiving. That is not necessarily the case in the Senate. When it looks as if we are not doing much, in most cases we are not doing much.

I remain hopeful that behind the scenes we will get a list in which we will be able to clear a number of amendments. At the end of that, I will be the first to come to the floor to congratulate the chairman and the ranking member, who have exhibited enormous patience. I have complained about coming here now for a week, I guess three times. They have been sitting on the floor all week. So they show even greater patience with respect to the bill itself. My impatience is about my amendment.

My hope will be that as lists are exchanged, I will find the name of this

amendment on the list and that it will be cleared at some point.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Madam President, first I thank my friend from North Dakota for his empathy for what the Senator from Maine and I are going through. There is a particular syndrome here that probably psychiatrists someday will analyze. But anyway, so far from we are surviving it. It is frustrating.

I support the amendment of the Senator from North Dakota. It makes eminent sense to me in every way and it is certainly relevant to this bill. We have a process where we are trying to put together a group of amendments from both sides, and yet there are few people whose amendments haven't made it to that list who are refusing to consent. This is one of those moments of Senate gridlock, but we are going to continue to work at it. I in particular want to reassure the Senator, my friend, we are going to try to continue to work to get his amendment passed.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Let me thank the Senator from Connecticut and the Senator from Maine. No one that I know of ever has accused the Senate of speeding. We have never been accused of speeding. It is a slow, deliberate, frustrating process to get legislation done. I understand that. No one has to have more patience than those who have managed the bill on the floor.

Let me look ahead with great anticipation of coming to the floor and thanking both of them for allowing me to get my amendment passed. I would much prefer that than coming to the floor in a crabby mood about an amendment I couldn't get done.

I thank them for their patience and thank them for their work, and I hope later today we will be able to clear some of these amendments.

Mr. LOTT. Will the Senator yield? Is it too late to object to the Senator's amendment?

Mr. DORGAN. The Senator has a right to object to anything at any time. In fact, there are some professional objectors, as we know, here in the Senate.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, I will point out we do have professional objectors on both sides. We have people who are eager to object to amendments going forward. But the Senator from Connecticut and I are working hard to try to clear a list that could be accepted by unanimous consent without rollcall votes, and then I have just confirmed with my staff what I said a few moments ago, that there is a second list we are trying to clear for rollcall votes. I am not saying the Senator's amendment has cleared the UC list, but I am telling the Senator his amendment remains on a list we are trying to develop to have rollcall votes.

Now, this is a difficult procedure because of the power of any Senator to throw a monkey wrench into the works, and we have a lot of monkey wrenches and other tools that are being thrown by Senators on both sides of the aisle. But I do want to assure the Senator his amendment is on a list the Senator from Connecticut and I are trying to clear for votes.

Thank you, Madam President. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Madam President, I am in favor of pushing this from time to time. Yesterday we had a vote on something that was very instructive and I appreciate the majority leader pushing it to a vote.

We had for 2 years—2 years—a vacancy in the Assistant Secretary for Indian Affairs position—for 2 years. This is shameful. People are living in Third World conditions in this country and the head of the BIA had not been confirmed. For 2 years it was vacant. This was a nominee by the President, and I supported the nominee. He sent it up last fall. We didn't get it done. He sent it up earlier this year, and I immediately moved it out of my committee. This is President Bush's appointment, and a good one, I might add. There was a hold on it. We finally forced it to the floor of the Senate a couple of days ago, and guess what. The vote was 87 to 1. One person in the Senate puts a hold on something and the whole thing grinds to a halt.

Let's force it in a vote, as my colleague Senator REID did, and we will discover who is trying to hold things up. Let's move ahead on these amendments and have votes, and we will get the best of what both sides have to offer.

I yield the floor, and I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### UNANIMOUS CONSENT REQUEST

Mr. REID. Madam President, I ask unanimous consent that Monday, this coming Monday, March 12 at 3 p.m., the Senate begin debate on the following: S.J. Res. 9, sponsored by Senator REID of Nevada; S. Res. 101, sponsored by Senator REID of Nevada; S. Con. Res. 7 by Senator WARNER; S. Res. 70 by Senator MCCAIN; S. 641 by Senator GREGG; that there be 6 hours for debate on these items en bloc on Monday, equally divided between the two leaders or their designees; that no amendments or other motions be in order to any of the above; that on Tuesday, March 13 there be 6 more hours for debate on the above, divided in the same way; that at the conclusion or yielding back of that time, the

Senate vote on each of the above in the above order; and that the preceding all occur without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Madam President, reserving the right to object, we have watched carefully our good friends on the other side of the aisle on this issue going back to January in an attempt to reach some kind of a consensus on their side of the aisle. I asked my staff to go back and total up the number of different proposals that have either been proposed here on the floor or proposed by one of our good friends on the other side. There are 16 of them.

There was a Biden resolution and then there was a Levin resolution. Then there was a Reid-Pelosi resolution, the Murtha plan, the Biden-Levin resolution, the Conrad funding cut. There was a waiver plan, a timeline plan, a Feingold resolution, an Obama resolution, a Clinton resolution, a Dodd resolution, a Kennedy resolution, a Feinstein resolution, a Byrd resolution, a Kerry resolution, and today would make No. 17.

At this particular juncture, having just gotten this proposal, it would be necessary, I would say to my good friend, the majority leader, for me to share it with members of my conference. We also would want to make certain it would still be the view of my side that the Warner proposal, the McCain proposal, and the Gregg proposal would be the ones we would want to offer. That was 3 weeks ago. I was one of those privileged to hear a briefing from General Petraeus over at the Pentagon this morning. Conditions are changing. We would have to go through a fairly significant consultative process on this side of the aisle to be able to conclude exactly what we would want to offer. I am prepared to begin that process, but I can't today agree to this particular consent agreement. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The majority leader is recognized.

Mr. REID. Madam President, we all recall that when we had the debate a couple of weeks ago, the issue was could the Republicans offer amendments to the antisurge resolution that was on the floor. The purpose of that, of course, was to divert attention away from the antisurge resolution. The House and the Senate voted on the antisurge resolution, and 56 percent of the Senate and 56 percent of the House voted against the surge.

I was of the understanding that following the discussion—following the legislation that was completed on that matter, Republicans wanted the opportunity to offer McCain, which was pro-surge; Warner, which was middle ground; and then Judd Gregg, which was a feel-good amendment. At this stage it appears they have changed their opportunities.

I say this: This war has been going on for 48 months—48 months. This war

will soon be beginning the fifth year. As of less than 2 weeks, the war will be in its fifth year. When the Democrats were in the minority, we tried lots of ways to get the President to refocus on this war, to change course. We have been in the majority for 8 weeks and what have we done? We have had almost 50 hearings on Iraq. These are hearings that should have been done a long time ago. We have 3,200 dead American soldiers, 25,000 of them wounded. We are now focusing on Walter Reed, and the same type of oversight we have at Walter Reed and our other military facilities, taking care of our wounded veterans, and then being, some of them, dumped into the Veterans' Administration system prior to their being able to be in that system.

We are being criticized for wanting to go forward on the debate, as we thought the minority wanted. General Petraeus, today, from Iraq—it was on all the news—what did he say? He said the war in Iraq cannot be won militarily. He said that. I didn't say that, he said it. It can only be won politically.

We believe, as does an overwhelming majority of the American people, that President Bush wants to change course in Iraq. That is why we want to debate that. We don't want to take a lot of time. It will be very short. But the mission in Iraq has changed dramatically during these 4 going on 5 years. I am disappointed that again the minority does not want to debate on Iraq.

I say this: There will be a debate on Iraq. The House and Senate, a majority in the House and Senate agree that the course in Iraq must change. Today, the House propounded what they want to do. Today, we propounded what we want to do. They are basically the same thing. Theirs is a little different because they are getting on to a supplemental appropriations bill. We cannot do that. But it is the same principle—change course in Iraq and redeploy these troops.

We will have other opportunities to debate Iraq. But at this stage I am very disappointed we are not going to be able to set up a time next week to go forward. In the meantime, I have spoken to the managers of this legislation now before the body. Hopefully, we can move forward.

I say to everyone here, any bags that were packed for weekend travel should be put on hold. Save that for some other time. We could be in here over the weekend. We could have as many as three cloture votes over the weekend. One will be on the package of bills that has had no hearings or anything else. We will do that. I guess it is an opportunity—filing that cloture—to see if November 7 was correct; did the Democrats win? I guess that is what that first vote will be. I think it will be that they did win. Then we will go to cloture, if necessary, on the bill, and then on the substitute.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Madam President, let me agree with the majority leader that the Iraq debate will be coming. Nobody on my side objects to having that debate. It is about supporting the troops.

Shortly we will have before the Senate supplemental appropriations, which is about funding for the troops. That debate, I am certain, will occur, as the majority leader indicated, before the Easter recess. We will take a look at the proposal he offered a few moments ago to see whether it is possible to have another Iraq debate next week before we have another one 2 weeks from now. But I cannot agree to this today, having just been handed the plan the majority has a few moments ago, and not having had an opportunity to consult with my own side about what proposals we might think would be appropriate to offer—some 3 weeks after the last discussion of the possibility of entering into a unanimous consent agreement to handle this measure.

With regard to the status of the war, I am certain nobody in this Chamber objects to the fact we have not been attacked here at home since 9/11. I doubt if anybody in the Chamber thinks that is a complete accident, some quirk of fate. It is a direct result of having been on offense in both Afghanistan and Iraq. Nobody is satisfied with the progress made in Iraq. That is why we have a new Secretary of Defense and why we have a new general, from whom I and others heard this morning, indicating there are early signs that this mission may well succeed.

I don't think we ought to say to our troops in the middle of this new mission we are not going to support them. That is what this is all about. We will get back to the Iraq debate in due time. Members on my side of the aisle will be happy to engage. We think this is the most important issue in the country, and we look forward to having that debate, at the latest in the context of the supplemental appropriation. I yield the floor.

Mr. REID. Before my friend leaves, I renew my consent making it 60 votes rather than 50 votes. Does that affect anything?

Mr. MCCONNELL. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. My objection is for the same reason I objected to the earlier consent agreement.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from California is recognized.

Mrs. BOXER. Mr. President, I am sorry the Republican leader was unable to agree to the proposal put forward by Senator REID on behalf of the Democratic majority of the Senate. It seems to me my friends on the other side of the aisle cannot accept yes for an answer. They have wanted for a long time to have a vote on the Gregg amendment. Senator REID said, fine, we will vote on the Gregg amendment.

Mr. REID. Will my friend yield for a second?

Mrs. BOXER. Yes, I am happy to.

Mr. REID. I want to make sure the RECORD is clear. Speaking to the majority whip, I want to make sure everybody understands we are going to get to this, and whether we do it next week or on the supplemental, we are going to do it. We can do it on both. The issue is that the House is on the supplemental already; therefore, they have things they can do on it we cannot do until we get to it.

Thank you very much.

Mrs. BOXER. Yes, I am glad the leader explained that. The fact is, with the approval of the other side, we could have taken up the Iraq issue on Monday, and we could all have been heard all of Monday, Tuesday, and then voted for the resolution that represented our ideas, our thoughts, on how to proceed in Iraq.

The fact is, that proposal was objected to by the Republicans. What was that proposal? It was everything they wanted last week. They wanted a vote on the Gregg amendment. We said fine, you can do it. They wanted a vote on the Warner amendment. Senator REID said you got it. They wanted a vote in favor of the surge with the McCain amendment. Senator REID had that in his proposal. We Democrats are asking for a vote on our proposal, which I will talk about in a minute, and another proposal that would be similar to Senator GREGG'S.

Republicans would have gotten three of their amendments and proposals, and we would have gotten, on our side, two. But the Republicans cannot say yes. What this means is Senator REID is right. We are not going to debate Iraq next week—at least not Monday. We will debate it in the context of the supplemental or, if we can reach agreement, in the context of a unanimous consent resolution.

I am very proud to be a cosponsor of the Reid joint resolution. I want to talk about what it does. It says we support the troops. It says the circumstances cited in the 2002 use of force authorization have changed substantially. We all know that. It is not the same. We went in to find weapons of mass destruction. Then they changed the mission to capture Saddam Hussein. Then they changed the mission to make it safe for an election. Iraq has had three. Then they changed the mission to train the Iraqi troops, and they have now 300,000.

But I have to say that to see our troops in the middle of a civil war is not what we should be supporting. The Iraq Study Group said that, and this resolution says U.S. troops should not be policing a civil war. The American people agree with that. Further, we say U.S. policy in Iraq must change to emphasize the need for a political solution.

We all know there will never, ever be a solution, no matter how many troops are sent to Iraq, and whether they stay there a week, a month, a year, or 10 years, there will never be a solution

until that solution is a political one, where the countries in the region come forward, where the various parties in Iraq who are warring come to the table and hammer out an agreement.

Now, we know what happened when the President chose to go into Iraq. He turned his back. He turned his back on the war I voted for, the war against Osama bin Laden. He turned his back on the people of Afghanistan. Yes, we are there. But if we had done with half of the number of troops we had in Iraq now, and if we had used those in Afghanistan, and if we had spent maybe a third of the funding we spent in Iraq in Afghanistan, we would have a different scene in Afghanistan. We would be in a better place in Afghanistan.

So, clearly, what happened with the Iraq war was it took our focus off the war on terror. We call for the President to properly transition the mission of U.S. forces and begin a phased redeployment no later than 120 days following enactment. So we will start bringing the troops home. We Democrats want to start bringing the troops home and, if they don't come home, redeploy them out of Iraq to other places. It is our goal to redeploy all combat forces from Iraq by March 31, 2008.

I have to say, what I have heard from my colleagues on the other side of the aisle, whenever we talk about a timeline, is it is terrible to set a timeline. I rhetorically ask, why? Don't we need to send a message to the Iraqis that we will not hold their hands forever, that they have to take care of their own country, that we cannot keep sending the treasure of our country in the form of our troops forever? We have lost too many. Too many are wounded. I met with paralyzed veterans today. I can tell you that from the look on their faces, they are desperate for help they are not getting. Why? Because we have so many wounded, this administration wasn't ready for the numbers. They never say that. They weren't ready. They weren't ready to support our troops.

Now, we need a comprehensive strategy to ensure stability in Iraq. As I said, we need a mission our troops can accomplish. In our resolution, we call for three limited purposes: force protection, training and equipping Iraqi troops, and targeted counterterror operations. So we say, for the troops remaining, they will not be in the middle of a civil war, but they will protect our forces who are there, they will train and equip Iraqis and continue counterterror operations.

We want to change course. We want to transition the mission and we want to bring civility to Iraq. Now, that is Senator REID's proposal. I think the vast majority of Democrats are supporting it.

More than 3,175 U.S. military men and women have been killed in the war in Iraq. More than 23,900 have been wounded. So it is not hard to understand why a majority of the American

people now believe the war in Iraq was not worth fighting. The American people understand our military and their families are paying a very severe price for this never-ending war. They understand this administration's foreign policy decisions have not only made us less safe, but they have empowered dangerous leaders such as the one in Iran. It is time for us to begin the redeployment of our forces from Iraq, just as the Reid resolution recommends, so we can return our focus to the war on terror and fight that war from a position of strength. We cannot defeat al-Qaida while we are bogged down in the middle of a civil war.

I do hope we can pass Senator DORGAN's resolution making a very strong point that Osama bin Laden attacked our country, and we want him captured.

Our troops have performed brilliantly. They have done everything asked of them. They deserve the love and support of a grateful Nation. When you love the troops, you give them a mission they can accomplish. You don't give them mission impossible. You don't give them a mission that puts them in the middle of a civil war, and that is why the Democratic proposal is so important.

As former Secretary of State Madeleine Albright recently told the Senate Foreign Relations Committee, on which I serve:

We have put our forces in the absurd position of trying to prevent violence by all sides against all sides. The Sunnis want us to protect them from the Shiites. The Shiites want us on the sidelines so that they can consolidate their power. Both are divided among themselves. . . .

This is what she said to our committee. I was there when she said it:

If I was a soldier on patrol in Baghdad, I wouldn't know whom to shoot at until I was shot at, which is untenable.

An unclassified summary of the National Intelligence Estimate on Iraq states:

The intelligence community judges that the word "civil war" accurately describes key elements of the Iraqi conflict, including the hardening of ethno-sectarian identities, a sea change in the character of the violence, ethno-sectarian mobilization, and population displacements.

That is our intelligence community. There is no military solution to the situation in Iraq. The only sustainable solution is a political and diplomatic one, as I said previously.

Some warn us we must not redeploy our troops from Iraq and take them out of the middle of the civil war or else there will be a larger civil war. But I say we should heed the advice of Ed Luttwak, a senior fellow at the Center for Strategy and International Studies, who said:

By interfering with the civil war [in Iraq], we are prolonging it. . . .

Let me repeat that:

By interfering with the civil war [in Iraq], we are prolonging it. . . . we are intruding in matters we cannot manage successfully. And

therefore, I believe, that disengagement is the right way to go.

I wish to talk about something that gets Senators in trouble, and that is using the words "love the troops."

There is a lot of rhetoric about what it means to love the troops. I say when you love the troops, you give them gear and equipment they need, and you don't tell them to settle for less. We remember Secretary Rumsfeld who said, when asked by the troops about body armor:

As you know, you have to go to war with the Army you have, not the Army you want.

We will never forget that stinging rebuke to a soldier who was deeply fearful about the lack of armor, the lack of equipment. That arrogant statement shows why our service members were left scrounging for scrap metal for their vehicles and asking their families back home to send bandages and body armor.

What was interesting about the last election is people said nothing will change, nothing will change if the Democrats win this election. The first thing that happened was Rumsfeld was gone in 5 minutes—in 5 minutes. So elections have consequences, and I believe now we have a Secretary of Defense who seems to me to be trying to grapple with the problems he is facing. He isn't arrogant, and he doesn't tell the troops to go get lost if they ask a tough question.

The President is now increasing the number of troops in Iraq. Today I learned that in addition to the surge, he is adding another 2,000 troops. But we still know not all of them will have the best equipment. This is unacceptable, and loving our troops has to be more than a slogan. When you love your troops, you send them into battle adequately equipped.

When you love the troops, you don't lower the standards for their future colleagues in arms. In order to meet recruiting goals, the Army has significantly lowered eligibility standards. The number of waivers granted to Army recruits with criminal backgrounds has grown about 65 percent in the last 3 years. Approximately 11 percent, or 894, of the 8,120 waivers granted in 2006 were for people with felony convictions. When you love the troops, do you want to put them next to someone who has been convicted of a felony?

Our military men and women must trust their fellow soldiers with their lives. We must ensure that our military meets the highest standards.

I compliment Congressman MURTHA, who is known in this country as a war hero, who has been there, who has done that, who has seen things none of us would ever want to see. He says we can't keep sending our troops back into the field, into combat, without adequate preparation, training, and the highest standards—and rest.

I say that when you love the troops, you don't send them to moldy hospital rooms to recuperate. You don't do it. Recent press reports have revealed that

soldiers are languishing in substandard facilities at Walter Reed Army Medical Center. I thank my colleagues in the Congress for investigating this matter because some of us believe it is the tip of the iceberg.

I have asked my State staff to go on a tour of California hospitals and report back to me as to conditions in those hospitals.

An investigation by the Washington Post found vermin, leaking pipes, and mold at Walter Reed Building 18, an old hotel used by outpatients receiving care at the main Walter Reed Hospital facility.

The Post also highlighted larger and even more disturbing problems related to personnel management and record-keeping. Soldiers complained of lost paperwork, of difficulty locating their appointments and of months—even as long as 2 years—spent trying to navigate a bureaucratic nightmare. According to the Post, some soldiers have simply given up trying to receive care and have gone home.

I wish to point out to the Senate—because we all know there are deep differences about this war—I want people to know that although Senator LIEBERMAN and I do not see eye to eye on this war—and he will say that and I will say that; we see it from a different point of view—we have teamed up to try and make sure our soldiers on the battlefield get the mental health help they must have.

We are disturbed about some of the rules, about what we have found in our investigation with our staffs. And that is, many times doctors are overruled by the officers and a doctor will say: Do not send this individual out because they have post-traumatic stress and sometimes, unfortunately, we have learned the doctor doesn't hold sway, and the soldier is sent out with a pocketful of antidepressants, just as you would give someone aspirin for a headache.

This isn't good enough for our soldiers. Senator LIEBERMAN and I are now working with Senator MURRAY, Senator INOUE, Senator LEVIN, and Senator AKAKA to try and make sure our soldiers get the care they need, whether it is physical injury or mental injury.

I went to a hospital in San Francisco. I saw x-rays of brains that were damaged by explosions, and then I saw x-rays of brains of people who had post-traumatic stress. The doctors told me that in both cases, you see the damage. You can't tell one from the other.

So when you love the troops, you don't send them back into combat with post-traumatic stress and a bottle of antidepressants. You don't do it. Tragically, we know this is happening.

As part of the 2007 Defense authorization bill, my legislation passed requiring the DOD to issue guidelines as to the deployability of servicemembers with post-traumatic stress, but the DOD has not issued the guidelines and servicemembers with PTSD, post-trau-

matic stress disorder, continue to be deployed.

When you love the troops, you don't reduce the number of permanent disability decisions to save money, when so many of these troops are, in fact, permanently disabled. Recent press reports in my hometown paper, the Desert Sun in California, have suggested that the Army is trying to save money by giving our troops less of a disability rating than they deserve, despite an enormous spike in the number of battlefield injuries resulting from service in Iraq and Afghanistan.

Now, after nearly 4 years in Iraq, which was supposed to be a walk in the park, a mission easily accomplished, an enemy in the last throes, it is time to tell this President the time is up for his ever-changing mission.

Our troops, whom we all love, deserve more than broken promises, broken bodies, and broken dreams. It is time that Congress, following the will of the voters, start redeploying the troops out of Iraq now, as Britain has done, as Japan has done, as Italy has done, as Hungary has done, as Spain has done, as Portugal has done, as Norway has done.

It is time to say to the President that the authorization you received from this Congress has to come to an end, just like your coalition of the willing is coming to an end. The American people want this over.

The Democratic resolution that Senator REID tried to get before our body is reasonable. It is not a cut-and-run resolution. It is a resolution that says: Start redeploying the troops out of there, change the mission, as the Iraq Study Group suggested, take our troops out of the middle of a civil war, give them missions they can accomplish—force protection, training and equipping Iraqi troops, targeted counterterrorism operations so we can continue that war against al-Qaida for which I voted.

I didn't vote for this one. This one is a diversion from the war on terror, in my humble opinion.

My people in California want their National Guard home protecting them in case of emergency. I met with my National Guard. They are short of equipment. In a State such as mine where we have earthquakes, fire, flood, drought—every kind of problem one can name—we want our National Guard home and ready. There are terror targets in my State. We do have those symbols of America that the terrorists would love to target.

We want our troops back home. We are willing to say if you get them out of a civil war, if you want to keep them in the area to do a limited number of missions, that make sense, fine. It is time for diplomacy. It is time for a political solution. It is time for this Senate to take up Harry Reid's offer and allow us to vote on our resolution that starts redeploying the troops out of Iraq and bring up Senator WARNER's resolution and bring up Senator

GREGG's resolution and bring up Senator McCain's resolution—bring them all to the floor of the Senate. But don't block us from having this debate which we were ready to start on Monday.

I hope my Republican friends will reconsider. This is not the first time they have blocked us from debate on Iraq. We respect their points of view. We honor their points of view. We encourage them to support the resolutions that they support. But don't block a debate.

In closing, I compliment my friends, the managers of this 9/11 bill. This is such an important bill. It is so important. I restrained myself from offering amendments on this bill. I had something I wanted to do regarding blast-resistant cargo containers, but I didn't want to hold up getting this bill done. We can work on some of the fine points later.

I hope colleagues on both sides will vote to bring debate to a close on this 9/11 bill. Both our colleagues have worked so hard on it, and the 9/11 Commission has warned us we have work to do. We are so happy to see this bill on the floor. So let's get it done as soon as possible, and then let's go to a debate on a cloud that is hanging over all our heads, regardless of how one feels about this war. Let's have that Senate debate, that respectful debate on how to achieve success and bring our troops home from Iraq.

I thank the Chair. I yield the floor.

Mr. LIEBERMAN. Mr. President, I wish to notify our colleagues who are watching, or their staffs, that there is good news to report. There has been a break in the gridlock, and I soon will be propounding a unanimous consent agreement that will provide for a limited period of time for debate and then votes on four amendments that have been in dispute, perhaps one or two judicial nominations after that, and that will open the way for Senator COLLINS and me to move to adopt several other amendments we have been working on and on which there is bipartisan agreement, and those we can do by consent. So, in a few moments, I hope we can come forward to offer this light which suggests a breakthrough as we head to the cloture votes tomorrow.

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

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

Mr. NELSON of Florida. I ask unanimous consent to speak as in morning business for no more than 5 minutes.

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

WALTER REED

Mr. NELSON of Florida. Mr. President, we have had hearings this week in several of our committees on the situation at Walter Reed Army Hospital

and the great public service that the Washington Post has done in their investigative piece bringing to light the conditions that our soldiers surely should not be in. Naturally, there is no excuse for there to be mold and leaking ceilings and pipes that do not work, and so forth. It seems to foretell a greater problem since the Post brought this to light. More people have asked questions about the delivery of health care to our wounded soldiers, sailors, marines, anyone representing the United States, particularly in service to the country. There are just too many things that keep coming up that the system is not working as it should.

A major injury that we are finding coming out of Iraq and Afghanistan is traumatic brain injury, called TBI. If it is not diagnosed and treated early, then many times the effects are irreversible. Why is it that the inspector general of the Department of Veterans Affairs, in an IG report last July, July of 2006, points out that in traumatic brain injury, if you are in the military compared to if you have that injury in the private sector, it takes three times as long?

These are the very young men and women we are supposed to be protecting and looking out for their health because we are so appreciative of their service to this country. Indeed, that inspector general's report points out that if you are in the private sector and you have a brain injury, you are at least going to get that treatment within 2 weeks. The IG report says that if you are in the military, you are not going to get that treatment on average until 6 weeks later. That is the difference—a lifetime of debilitation by not having the early treatment for that brain injury.

So the word is out.

I am headed to one of four trauma centers in the country. It happens to be in my State, a veterans hospital that is one of the specialty training centers, specialty centers for brain injuries. It is in the Tampa VA hospital, the Haley Hospital. Of course, now that this has been in the news, I have been getting these questions about: Are they getting the kind of care they should? I hear some people who say yes, I hear others who say it is excellent care, and I hear others who say it is not. Well, we are going to find out. That is the responsibility of this Senator from the State of Florida. That is the responsibility of this Senator, a member of the Senate Armed Services Committee.

Let me tell my colleagues what else we are hearing. We are hearing that in this bureaucratic tape, this is what is happening: The soldier comes back from Iraq, is diagnosed with the traumatic brain injury, somebody makes a decision that they ought to go to one of those four VA hospitals that have a specialty for brain injury, but they do not get the paperwork processed to get them out of the military so that they are then eligible for the veterans. Believe it or not, I heard of cases where

they send the soldier down there, they get to the veterans hospital for brain treatment, and they say: We cannot treat you; you have not been released from the military.

How bad is that bureaucratic mumbo-jumbo? Who is the victim? The very people for whom we have set up a system of military hospitals and veterans hospitals to try to give the best care to. This nonsense has got to stop.

It is my hope that as a result of the Post bringing to light deplorable conditions in Building 18 at Walter Reed Army Hospital, it is scratching back the surface to see what is underneath, and whether it be the conditions in a hospital, veterans or military, whether it be bureaucratic handling of that hospital, military or veterans, or whether it is the administrative bureaucratic handling of the patient between the two systems, that we get it straightened out. We owe no less to the people who are sacrificing for this country.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceed to call the roll.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

Mr. LOTT. Well, Mr. President, here is one of my speeches I guess I am going to have to make every fortnight, but it is 6:20—it is on Thursday—and here we stand or mostly sit or hide and will not act on important amendments on this legislation because our colleagues will not come to agreement on some provision or another in the managers' package or some amendment.

I say to my colleagues, this is no way to legislate. If you have a problem, get over here and state it. If you have an objection, have the courage to stand up—be the man or the woman—and express your objection.

This is outrageous, and I am not blaming our leadership. It is not them. It is us. This whole bill has been a curiosity to me because I thought we were making good progress, and then we were not, and then I thought we were going to again, and now we are not.

So I tell you—it is not my authority to do so—but if I had the ability to wave a wand, I would say we are going to vote. If you don't like it, vote against it, but you are not stopping these amendments.

So I urge everybody involved—whether it is my colleagues on this side of the aisle or the other side—come over here and let's get going because we look pathetic when we do this sort of thing. It is just outrageous. We have votes we could take. We have two judges. Let's vote. Let's have a vote on the judges, and it will give us a chance to explain to our colleagues what the problem is with these other amendments.

So I plead with somebody: Pull the trigger. Let's have a vote. Then let's get some results around here. I am telling you, we all look bad. Did we not hear the American people? They want us to produce results. I have looked at these amendments. There is nothing wrong with any of these amendments. It is going to be injurious to the institution, to the Republicans and the Democrats. And, yes, I admit, I am outraged because I want to go home and be with my wife, have supper, and live a normal life. I would suggest some of our other colleagues do that. Maybe we could get a little more done around here and not look so bad in the process.

I want to say to the managers of the bill, I love them both, and I think they have been doing the very best they can. They are ready to go. So it is a disservice to Senator LIEBERMAN and Senator COLLINS, who have been managing this bill, which, yes, has problems, but we are never going to get them resolved, never going to get to a reasonable conclusion without actually having some votes.

When was the last time we had a vote around here? I can't even remember. Yesterday?

So Senator LIEBERMAN, I know you would like to get the show on the road. I support anything you want to do. If you want to just move the previous question, I am for that, or any other motion you want to make that would get the process started. A motion to table—that would be good. We could get going.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Chair.

Mr. President, I say to my friend from Mississippi, first, I want to congratulate you on your normalcy; that you actually want to get home and have dinner with your wife. That is a very healthy thing to do.

Mr. LOTT. I know it is abnormal for Senators.

Mr. LIEBERMAN. No, I think it is normal. But I would say—I will yield to Senator COLLINS in a moment—that we, as managers of this bill, really appreciate what you have said because we started on the bill last Wednesday. We had some good, healthy debate on a series of amendments that went to the heart of what the bill is about. Frankly, those amendments are done.

Now this bill is ready to be adopted and sent to conference, and what has happened, as always happens, is people see a vehicle moving, and jump on it with related or unrelated amendments. Incidentally, of all the amendments filed, apparently only seven or eight are going to survive as germane, presuming cloture is invoked tomorrow.

So people get to be—well, they see a horse moving and they want to jump on. Also, then others get to be quite demanding and, might I say respectfully, occasionally unreasonable in blocking votes on the amendments. It is one thing to be against an amendment, but

let's come out, vote on it. You can have your say. The record will be established. But to block the amendment from coming up that then blocks this important bill—which most of us will support—from going forward, that does not make sense.

So I appreciate the Senator's exacerbation.

Mr. President, I yield to my friend, the ranking member of the committee.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I, too, want to commend the Senator from Mississippi for putting forth a commonsense solution to the impasse in which we find ourselves. The Senator from Connecticut and I have been on the floor all day long. We have worked with our colleagues. We have come up with a group of amendments which we believe could be cleared by unanimous consent because they are not controversial. Yet can we clear that package? No. We cannot because even though there is no objection to the specific amendments in that package, they are being held up by Senators who want other amendments or are trying to ensure or block votes on other proposals.

We also came up with a set of amendments tonight—two Democratic amendments, two Republican amendments—that warrant rollcall votes. Two on each side, what could be fairer? Yet we cannot get rollcall votes.

If Members are opposed to amendments, come to the floor, debate them, and vote no, but do not prevent us from moving forward on a very important bill.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I thank the Senator from Maine and the Senator from Connecticut for their work. I admire them both so much.

Can I inquire, Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is Sununu amendment No. 291 to the substitute to S. 4.

Mr. LOTT. Parliamentary inquiry, Mr. President: Would a motion to move the previous question be a proper way to proceed?

The PRESIDING OFFICER. There is no such motion in the Senate.

Mr. LOTT. Would a motion to table be in order, Mr. President?

The PRESIDING OFFICER. A motion to table is in order.

Mr. LOTT. It is not my prerogative, but I am threatening it.

With that, Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

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

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

#### UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. LIEBERMAN. Mr. President, I have a unanimous consent request to offer, unfortunately not as large as I had hoped, but it may bring the Senators here to the floor and we could reason and go beyond this matter.

I ask unanimous consent that the Senate proceed to executive session to consider the nominations, Nos. 27 and 28; that the Senate immediately vote on the first nomination to be immediately followed by a vote on the second nomination; and that the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session; and that there be 2 minutes for debate between the votes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

#### EXECUTIVE SESSION

##### NOMINATION OF JOHN ALFRED JARVEY TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA

Mr. LEAHY. Mr. President, who is the first nominee?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read the nomination of John Alfred Jarvey, of Iowa, to be United States District Judge for the Southern District of Iowa.

Mr. LEAHY. Mr. President, today we consider the nomination of John A. Jarvey, who has been nominated for a seat on the U.S. District Court for the Southern District of Iowa. In his 18 years as a U.S. Magistrate Judge in the Northern District of Iowa, Judge Jarvey has built upon his reputation as is a well-respected attorney and former federal prosecutor and earned the bipartisan support of both home State Senators. I know Senator GRASSLEY, who has been a strong advocate for Judge Jarvey on the committee, will welcome his confirmation.

A native of Minneapolis, MN, Judge Jarvey received his B.S. in accounting from the University of Akron in 1978 and his J.D. from Drake University in 1981 before clerking for Judge Donald E. O'Brien in the Northern District of Iowa. After his clerkship, Judge Jarvey began his career as a trial attorney in the criminal division of the Justice Department from 1983 to 1987, working in the narcotic and dangerous drug Section before his appointment as a magistrate judge for the Northern District of Iowa in 1987. He is now the chief magistrate judge of that district. Since 1993, Judge Jarvey has also been trial advocacy instructor at Iowa Law School since 1993.

With his confirmation today, the Senate will have confirmed nine judicial nominations for lifetime appointments this year. That is more than half the total of confirmations for the entire 1996 session and we are still in February of this year. Of course, it was the Republican Senate majority that refused to proceed with qualified nominees and slowed consideration of President Clinton's nominations.

Indeed, one of the casualties of their pocket filibusters was an outstanding nominee from Iowa. Bonnie Campbell had served as attorney general for the State of Iowa and as the head of the Violence Against Women Office at the Department of Justice. Despite her qualifications and without any explanation, the Republican leadership in the Senate stalled her nomination for many months and then killed it. Hers was one of the more than 60 judicial nominations of President Clinton that Republicans pocket filibustered.

President Bush's nominations from Iowa have fared better in a Democratic-controlled Senate than President Clinton's did under Republican control. Judge Jarvey will be the third Iowa District Court judge confirmed while I have been chairman of the Judicial Committee. We also confirmed an 8th Circuit nominee from Iowa, Michael Melloy, when I was last Chairman.

I have long urged the President to fill vacancies with consensus nominees. After Judge Jarvey's confirmation, according to the Administrative Office of the U.S. Courts there will still be some 51 judicial vacancies, 25 of which have been deemed to be judicial emergencies. The President has sent the Senate nominations for only 22 of those seats, and has yet to send us nominees for 17 of the judicial emergency vacancies. That means two-thirds of the judicial emergency vacancies are without a nominee from this President.

I congratulate Judge Jarvey, his wife, and his three children on his confirmation today.

Mr. GRASSLEY. Mr. President, I urge my colleagues to support Judge John Jarvey, who has been nominated to serve as a U.S. district judge for the Southern District of Iowa. The Judiciary Committee unanimously approved Judge Jarvey some time ago, and I am glad that now we are moving expeditiously on his nomination.

I would like to give my colleagues a little background on this stellar nominee. Judge Jarvey comes from Cedar Rapids, IA. Since 1987, he has been the chief U.S. magistrate judge for the U.S. district court, Northern District of Iowa. He also has been a trial advocacy instructor at the University of Iowa Law School since 1993.

I received many letters from the Iowa legal community praising Judge Jarvey's judicial temperament, courteousness to litigants, and respect for and commitment to our judicial system. He has been praised for his judicial ethics and abilities as an administrator. Many letters commented on