CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2008—CONFERENCE REPORT—Resumed

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2082, Intelligence Authorization Act.

John D. Rockefeller IV, Dianne Feinstein, Kent Conrad, E. Benjamin Nelson, Russell D. Feingold, Barbara A. Mikulski, Ron Wyden, Ken Salazar, Mark Pryor, Patty Murray, Benjamin L. Cardin, Frank R. Lautenberg, Jack Reed, Sheldon Whitehouse, Harry Reid, Carl Levin, Bill Nelson.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 2082, the Intelligence Authorization Act, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON), the Senator from Missouri (Mrs. MCCASKILL), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

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

The result was announced—yeas 92, nays 4, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—92

Akaka
Alexander
Allard
Barrasso
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Brown
Brownback
Bunning
Byrd
Cantwell
Cardin
Carper
Casey
Coburn
Cochran
Coleman
Collins
Conrad
Corker
Cornyn
Craig
Crapo
Dodd
Dole
Domenici
Dorgan
Durbin
Ensign
Enzi
Feingold
Feinstein
Grassley
Gregg
Hagel
Harkin
Hatch
Hutchison
Inhofe
Inouye
Isakson
Johnson
Kennedy
Kerry
Klobuchar
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lugar
Martinez
McCain
McConnell
Menendez
Mikulski
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Pryor
Reed
Reid
Roberts
Rockefeller
Salazar
Sanders
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Sununu
Tester
Thune
Voinovich
Warner
Webb
Whitehouse
Wicker
Wyden

NAYS—4

Burr
Chambliss
DeMint
Vitter

NOT VOTING—4

Clinton
Graham
McCaskill
Obama

The motion was agreed to.

The PRESIDING OFFICER. On this vote, the yeas are 92, the nays are 4. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

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

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

Mr. NELSON of Florida. Mr. President, while we are waiting here for some of the determination of a time agreement with regards to the consideration of the conference report, I want to go ahead and lend my support and acknowledge to the rest of the Senate that this is a bill that is very necessary to pass. Because, what this bill does, by authorizing the activities of the intelligence community, it continues to make the oversight function of the Congress—in particular, the Senate and the House Intelligence Committees—poignant and relevant to a community that is not accustomed to having oversight.

Our committee leadership, chairman and vice chairman, Senators Rockefeller and Bond, as we say in the South, they have cracked the whip with the intelligence community to get them to realize that this is a constitutional government of shared powers; that the executive branch doesn't just run the show—particularly on something as sensitive as the collection of intelligence. Rather, it needs to be done within the law, and one of the ways of ensuring that is through the sharing of powers between two different branches of Government who have checks and balances upon each other. We in the legislative branch oversee the activities of the executive branch—in this case, all of the intelligence community and their activities, which are absolutely essential to the protection of our country. This conference report is a very important bipartisan document, which increases the accountability in the intelligence community, and it authorizes dozens of critical intelligence programs to keep us safe every day.

The conference report includes a new, strong inspector general in the Office of the Director of National Intelligence. Inspectors general are increasingly important in the intelligence community, where billions of dollars are spent outside of public view. Our committee, as well as the American public, has to rely on the inspector general as an important part of the oversight of the intelligence community.

As we look back, several years ago, we completely reorganized the intelligence community. A Director of National Intelligence was set up to integrate the disparate elements of the intelligence community. But there is a lot more that needs to be done, and a strong inspector general at the DNI is another step in the right direction.

The conference report also includes a provision that makes the Director of the NRO—the National Reconnaissance Office—and the NSA—the National Security Agency—subject to Senate confirmation. Now, why is that important? That is important because, again, it is part of the checks and balances of the separate branches of Government. Both of these agencies, outside of the public view because of the top-secret nature of this work, oversee large programs that cost vast amounts of money, and not every program has been a success. So by having the confirmations of the Directors of the NRO and the NSA come to the Senate, it improves that accountability and responsiveness to the legislative branch of Government.

The authorization bill also requires an assessment of the vulnerability of the intelligence community's major acquisition programs. We have to assess that the program is going to stay on track and that it is not going off the rails with regard to cost. We are talking about billions of dollars on some of these programs. By keeping them on track, by knowing what to anticipate, it is much easier to plan ahead.

This bill also provides an annual reporting system which will help us keep in focus, curbing these cost overruns and these schedule delays. If you don't do that, things are going to get out of control. As the intelligence community continues to be more and more sophisticated because of the technical means it employs, it is more and more important that our oversight tools be in place and effective.

Now, that is enough alone to pass this bill, but we have an area of disagreement coming up. We are expecting the minority to offer a point of order that would remove a provision in the conference report. This provision requires the Army Field Manual to be used as the standard for interrogation methods. This Army Field Manual was released over a year ago. It specifically prohibits cruel, inhuman, and degrading treatment.

There are eight techniques in the Army Field Manual that are specifically prohibited from being used in conjunction with intelligence interrogations: forcing the detainee to be naked, perform sexual acts, or pose in a sexual manner; placing hoods or sacks over the head of a detainee; using

duct tape on the eyes; applying beatings, electric shock, burns, or other forms of physical pain. The fourth is waterboarding. That is prohibited. The fifth is using military working dogs. The sixth is inducing hypothermia or heat energy. The seventh is conducting a mock execution. The eighth is depriving the detainee of necessary food, water, and medical care.

Now, haven't I just described what America is all about? Is that not the standard by which we, as the leader of the world, have to announce to the world what we believe in and how we are going to conduct ourselves, and that is how we are going to conduct ourselves not only among our own people and how we treat them but how we are going to treat others?

The manual provides that three interrogation techniques may only be used with higher level approval. The good cop-bad cop interrogation tactic; the false flag tactic, where a detainee is made to believe he is being held by another country; or separation, by which the detainee is separated so he can't coordinate with other detainees on his story—those techniques can be used, but it has to be approved at a higher level.

Mr. President, there is something that is going to worry everybody, and it has worried this Senator personally and as a member of the Intelligence Committee. What if all of this doesn't work and the country is in imminent peril? Well, along with the standards we are going to set, which I hope we are going to pass into law—these standards in the Army Field Manual which will state clearly what the standards are for our country and how we are going to conduct ourselves—there is always the constitutional authority under article II.

As Commander in Chief, the President can act when the country is in immediate peril. And if he so chooses, as Commander in Chief, to authorize activities other than what the Army Field Manual allows, then the President would be accountable directly to the American people under the circumstances with which he invoked that article II authority as Commander in Chief.

What we are saying today does not relate to the President's article II power. We are setting statutory power. It is important that we tell the rest of the world the standards of how we interrogate detainees. We are putting these standards into law and we will ensure that these techniques are in compliance with the humane treatment that we would expect and hope our Americans would also receive.

I think there should be no confusion. We have an obligation to set these standards into law. If that dire emergency ever occurred in the future, the President has his own authority under article II of the Constitution. But that is not the question here today before us. The question is: What do we set as the standard of interrogation, and that has to be that there is no torture allowed under this statutory law.

Therefore, when the point of order is raised that would take the Army Field Manual standards for interrogation techniques out of the conference report, I urge the Senators not to take this provision out of this important intelligence reauthorization bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senate will soon vote on the intelligence authorization bill, which contains a provision requiring all U.S. governmental agencies, including the CIA, to comply with the Army Field Manual's prohibition on torture. This reform is urgently needed. I commend the Intelligence Committee for adopting this provision. Its enactment will ensure that the Government uses only interrogation techniques that are lawful and those provisions should be retained.

In the Detainee Treatment Act passed in 2005, Congress attempted to reaffirm our commitment to the basic rights enshrined in the Geneva Conventions and restore America's standing in the eyes of the world as a nation that treats detainees with dignity and respect.

These rights reflect the values we cherish as a free society, and also protects the lives of our service men and women. Today, however, we know that the 2005 act has fallen short of our goals. By not explicitly applying the Army Field Manual standards to all Government agencies, we have left open a loophole that the Bush administration promptly drove a Mack truck through.

The so-called enhanced interrogation program carried out in secret sites became an international scandal and a profound stain on America in the eyes of the world. The administration issued an executive order last year to try to minimize the outcry, but the order failed to renounce abuses such as waterboarding, mock executions, use of attack dogs, beatings, and electric shocks.

The disclosure of secret opinions by the Office of Legal Counsel gave further evidence that the administration had interpreted the Detainee Treatment Act and other antitorture laws in an unacceptable, narrow manner.

Attorney General Mukasey's refusal at his confirmation hearings to say whether waterboarding is illegal gave us even more reason for concern. The outrages do not end there. Two months ago, the New York Times reported that in 2005 the CIA had destroyed at least two videotapes documenting the use of abusive techniques on detainees in its custody. These videotapes have been withheld from Federal courts, the 9/11 Commission, and congressional committees. Two weeks ago in his testimony before the Senate Judiciary Committee, the Attorney General flat out refused to consider investigating possible past acts of torture or to brief congressional committees on why he believed the CIA's enhanced interrogation program is lawful.

Last week, we received official confirmation that the CIA had used waterboarding on three detainees. At the same time, the White House made the reckless claim that waterboarding is legal, and that the President can authorize its use under certain circumstances.

The White House position is directly contrary to the findings of courts, military tribunals, and legal experts that waterboarding is a violation of U.S. law and a crime against humanity.

In the words of a former master instructor for U.S. Navy SEALs:

> Waterboarding is slow motion suffocation with enough time to contemplate the inevitability of blackout and expiration. Usually the person goes into hysterics on the board. For the uninitiated it is horrifying to watch and if it goes wrong, it can lead straight to terminal hypoxia. When done right it is controlled death.

Waterboarding has a long and brutal history. It is an ancient technique of tyrants. In the 15th and 16th centuries, it was used in the Spanish Inquisition. In the 19th century, it was used against slaves in this country. In World War II, it was used against our troops by Japan. We prosecuted Japanese officers for using it and sent them to years and years of jail for following that procedure.

In the 1970s, it was used against political opponents by the Khmer Rouge in Cambodia and military dictatorships in Chile and Argentina. Today it is being used against pro-democracy activists in Burma. That is the company we keep when we fail to reject waterboarding.

In fact, Attorney General Mukasey could not even bring himself to reject the legal reasoning behind the infamous Bybee torture memo of the Office of Legal Counsel which stated that physical pain amounts to torture only if it is:

> equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.

According to that memo, anything that fell short of that standard would not be torture. This Bybee memorandum was in effect for 2½ years before it was ever effectively suspended. It was suspended then by Attorney General Alberto Gonzales for the Judiciary Committee, quite frankly, in order that his nomination could be favorably considered.

Included in the Bybee memoranda was a provision that was an absolute defense for any of those who would be involved in this kind of torture, unless prosecutors could prove a specific intent that the purpose of the torture was to harm the individuals rather than to gain information, therefore effectively giving carte blanche to any of those who would be involved in torture.

When Attorney General Gonzales appeared before the Judiciary Committee

and effectively repealed the Bybee memoranda, he did so for the Department of Defense but not for the Central Intelligence Agency, even at that time a clear indication of what the administration was intending to do with the Central Intelligence Agency. It should not be any surprise to anyone that this has been ongoing and continuous.

According to that memo, again the Bybee memorandum, anything that fell short of this standard would not be torture. CIA interrogators called the memo their ''golden shield'' because it allowed them to use virtually any interrogation method they wanted.

When the memo—this is the Bybee memo—became public, its flaws were obvious. Dean Harold Koh of Yale Law School testified that in his professional opinion as a law professor and a law dean, the Bybee memoranda is ''perhaps the most clearly legal erroneous opinion I have ever read [because of all of the previous statutes and laws that have been passed to prohibit torture by the Congress of the United States and those initiated and supported by Republican presidents, by Ronald Reagan, as well as Democratic presidents''.]

This was not a partisan series of statements about what the United States position has historically been. The Bush administration was embarrassed into withdrawing the memo. To this day, no one in the administration has repudiated its content. The torture memo continues to haunt this country. I have asked the Attorney General several times to reject its legal reasoning, but he continues to refuse to do so. The only solution is for Congress to apply the Army Field Manual's standards to the entire Government. There has rarely if ever been a greater need to restore the rule of law to America's interrogation practices.

The field manual represents our best effort to develop the most effective interrogation standards. The manual clearly states that: Use of torture is not only illegal but also it is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear.

We have on trial in military courts six of those who are going to be tried because of 9/11. There is no question there is going to be a whole series of appeals because of the use of various techniques against them. It may very well be that some turn out—because of the violations of basic and fundamental, some constitutional rights, there will be a question about what the outcome is going to be with regard to those individuals.

Why not get it right from the start? The manual gives our interrogators great flexibility, provides all the techniques necessary to effectively question detainees, but it makes clear that illegal and inhumane methods are not permitted.

In a letter to our troops dated May 7, 2007, General Petraeus stated:

> Our experience in applying the interrogation standards laid out in the Army Field Manual . . . shows that the techniques in the Manual work effectively and humanely in eliciting the information from detainees.

Applying the field manual's standards throughout our Government will move us closer to repairing the damage to our international reputation in the wake of the Abu Ghraib scandal. It will once again commit the United States to be the world's beacon for human rights and fair treatment. It will improve the quality of intelligence gathering, and protect own personnel from facing punishment, condemnation, or mistreatment anywhere in the world. It will make us more, not less, safe.

Torture is a defining issue. It is clear that under the Bush administration we have lost our way. By applying the field manual standards to all U.S. Government interrogations, Congress will bring America back from the brink, back to our values, back to basic decency, back to the rule of law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, today's debate goes to the heart of what our country is and what we wish it to be, by asking this: Will the United States of America condone torture? Is there, at America's heart, a heart of darkness? This authorization bill for America's intelligence community offers us the opportunity to answer that question decisively. It contains provisions for which I have fought from my initial amendment in committee, and which I am proud to support today, that would prohibit members of the intelligence community from using interrogation techniques beyond those authorized in the Army Field Manual.

By adopting this amendment, the two Intelligence Committees, Congress's experts on these matters, have sent a clear signal to America and to the world that in this country the rule of law is our strongest bulwark against those who would do us harm.

I hope that today the Senate will have the confidence in our values to reaffirm that signal and pass this legislation with the Army Field Manual provision included.

Over the past several months, the American people have become all too familiar with the issue of torture. I want to discuss one technique in particular today, waterboarding, or water torture, or the water cure, which dates back to the Spanish Inquisition of the 14th century.

Waterboarding was a favorite of torturers, because its terrible effects could be generated without the visible damage accompanying the rack, the screw, the iron, the whip, or the gouge. It could be done over and over.

In the 20th century, waterboarding was done in the Philippines, where colonizers wielded it against indigenous peoples. It has been used in Sri Lanka, in Tunisia, by the Khmer Rouge in Cambodia—we are in the tradition of Pol Pot—by the French in Algeria, by the Japanese in World War II, and by military dictatorships in Latin America. The technique ordinarily involves strapping a captive in a reclining position, heels above head, putting a cloth over his face and pouring water over the cloth to create the feeling of suffocation and drowning. It leaves no marks on the body, but it causes extreme physical and psychological suffering.

A French journalist, Henri Alleg, was subjected to this method of interrogation during the struggle for Algerian independence. He wrote in his 1958 book ''The Question'':

> I tried, by contracting my throat, to take in as little water as possible and to resist suffocation by keeping air in my lungs for as long as I could. But I couldn't hold on for more than a few moments. I had the impression of drowning, and a terrible agony, that of death itself, took possession of me.

Waterboarding is associated with criminal, tyrant, and repressive regimes, with rulers who sought from their captives not information but propaganda, meant for broadcast to friends or enemies whether true or false. Regimes that employed the technique of waterboarding generally did not do so to obtain information; rather, to obtain compliance. But no matter the purpose or the reason, its use was and is indefensible.

Water torture was not unknown to Americans. A 1953 article in the New York Times quotes LTC William Harrison of the U.S. Air Force, who said he was ''tortured with the 'water treatment' by Communist North Koreans.'' In testimony before a U.S. military tribunal, CAPT Chase Jay Nielsen described being waterboarded by his Japanese captors following the 1942 Doolittle raid by U.S. aviators. From all this, America's military knew there was a chance our servicemen and servicewomen would be subjected to water torture.

The Defense Department established the SERE program—survive, evade, resist, and escape—to train select military personnel who are at high risk of capture by enemy forces or isolation within enemy territory. The program has also subjected certain service personnel to extreme interrogation techniques, including waterboarding, in an effort to prepare them for the worst—the possibility of capture and torture at the hands of a depraved or tyrannical enemy.

According to Malcolm Nance, a former master instructor and chief of training, at the U.S. Navy SERE school in San Diego:

> [O]ur training was designed to show how an evil totalitarian enemy would use torture at the slightest whim.

Those who have experienced this technique, even at the hands of their own brothers in arms, are unequivocal about its effect. Former Deputy Secretary of State Richard Armitage, who underwent waterboarding during SERE training, said this:

As a human being, fear and helplessness are pretty overwhelming. . . . this is not a discussion that Americans should even be having. It is torture.

Our colleague in this body, Senator John McCain, has said the same. Yet it was to this relic of the dungeons of the inquisition, of the Cambodian killing fields, and of the huntas of the Southern Hemisphere that the Bush administration turned for guidance. I will speak later about how our Department of Justice came to approve this. But for now, we know that last week, in a stunning public admission, the CIA Director General, Michael Hayden, admitted the United States waterboarded three detainees following the September 11 attacks. The virus of waterboarding had traveled from tyrant regimes, through the SERE program, and infected America's body politic.

Retired BG David Irvin, of the U.S. Army Reserve, a former intelligence officer and instructor in interrogation, and Joe Navarro, interrogator with the FBI, recently wrote:

[T]here is considerable evidence that the CIA had to scramble after 9/11 to develop an interrogation program and turned to individuals with no professional experience in the field. . . . Given the crisis atmosphere of the day, it is all too easy to believe the comment of an intelligence insider who said of the secret program to detain and interrogate al Qaeda suspects that ''quality control went out the window.''

Don't let us jump out the window after it.

America's military is expressly prohibited from using torture because intelligence experts in our Armed Forces know torture is an ineffective method of obtaining actionable intelligence. Again, I will speak later about the false assertion that this program was designed for 18-year-old novices. Some of the most sophisticated intelligence interrogations are done by our military after intense training. Our military adheres to the Army Field Manual on Human Intelligence Collector Operations. At a hearing before the Senate Select Committee on Intelligence, on which I serve, I asked COL Steven Kleinman, a 22-year veteran of interrogations, a senior intelligence officer in the U.S. Air Force Reserves, and a veteran interrogator with plenty of experience overseas in the Middle East, about his experience conducting interrogations using the Army Field Manual.

He said:

I am not at all limited by the Army Field Manual in terms of what I need to do to generate useful information. . . . I've never felt any necessity or operational requirement to bring physical, psychological or emotional pressure on a source to win their cooperation.

A significant number of retired military leaders have written to the chairman and vice chairman of the Intelligence Committee saying:

interrogation methods authorized by the field manual have proven effective in eliciting vital intelligence from dangerous enemy prisoners. . . . And the principles reflected in the Field Manual are values that no U.S. agency should violate.

And GEN David Petraeus, commander of U.S. forces serving in Iraq, reiterated this point when he wrote last year to every soldier serving in the Iraq theater:

Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary. . . . our experience in applying the interrogation standards laid out in the Army Field Manual on Human Intelligence Collector Operations that was published last year shows that the techniques in the manual work effectively and humanely in eliciting information from detainees.

The cochairs of the 9/11 Commission emphatically agree. On Monday, the chairmen, together with two former Secretaries of State, three former National Security Advisors, and other national security experts, wrote that ''[c]ruel, inhuman and degrading treatment of prisoners under American control makes us less safe, violates our national values, and damages America's reputation in the world.''

Torture is ineffective. It is wrong. It is dangerous to all those who serve the United States of America in harm's way. It should never, ever be used by any person who represents the United States of America or any agency that flies the American flag.

I was proud last July to introduce an amendment in the Intelligence Committee that would write this rule into law. When that effort did not succeed, I was proud again last winter to support Senator FEINSTEIN's amendment in conference.

I call on all my colleagues to support this legislation. We can journey no longer down Winston Churchill's stairway which leads to a dark gulf. As Winston Churchill said:

It is a fine broad stairway at the beginning, but after a bit, the carpet ends. A little farther on, there are only flagstones, and a little farther on still these break beneath your feet.

The United States of America—the city on a hill, the light of the world, the promise of generations—must not ever condone torture. Torture breaks that promise. Torture extinguishes that light. Torture darkens that city. I hope by our actions today, we in the Senate will help turn this country back toward our centuries-old promise. I hope we will turn toward the light.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I almost have no words to praise the Senator from Rhode Island for the eloquence and strength of his speech, which was not only grounded in very deep substance but was delivered with elegiac nature that both culled the human spirit as well as grounded the futility of torture. I congratulate him.

I also rise strongly in support of section 327 of the intelligence authorization conference report. I recognize it will be controversial. I don't care. It is important that some background on this section be provided. Some of it has been this morning. During the conference on the authorization bill, the conferees adopted an amendment that would require the intelligence community to conduct its interrogation in accordance with the terms of the U.S. Army Field Manual. The full membership of the House Intelligence Committee and the Senate Intelligence Committee served on the conference committee. So it was a majority of those two committees that came to that conclusion.

Section 327 of the intelligence authorization conference report directly parallels the provision in the Detainee Treatment Act that forbids subjecting anyone in Department of Defense custody to any treatment or technique of interrogation not authorized by and listed in the U.S. Army Field Manual on intelligence interrogation. Section 327 applies these same restrictions to the intelligence community at large.

The effect of section 327 is, therefore, to require all of the U.S. Government operate their interrogation programs under a single interrogation standard, the standard set by the U.S. military. Adopting the military standard for interrogation as the universal standard makes sense, and I hope some of my colleagues are listening. It is the members of the military who most benefit from reciprocal obligations of the Geneva Convention requiring humane treatment of prisoners and who are most likely to be subjected to retaliation based on the failure of the United States to follow those obligations. That statement is frequently made, and then it is frequently absorbed and discarded. Think about it. Retaliation is the way of the world, and it will be no different here. What we do to others, they will do to us.

The U.S. Army Field Manual on interrogation was revised in September 2006 after significant interagency review. This included a review by the Central Intelligence Agency. By providing a number of approach strategies such as the incentive approach, emotional approach, and the Mutt-and-Jeff approach, the Army Field Manual gives interrogators significant flexibility to shape the interrogation. It doesn't delineate exactly how. It gives them a lot of flexibility.

The Army Field Manual also explicitly prohibits, as we know, waterboarding, forcing detainees to be naked, inducing hypothermia or heat injury or subjecting a detainee to beatings, as well as a number of other things. All this raises the question at the heart of this debate: Should the Central Intelligence Agency, the well-known CIA, be allowed to use coercive interrogation techniques to obtain information from al-Qaida detainees?

This debate is about more than legality. It is about more than ensuring

that the intelligence community has the tools it needs to protect us. It is also about morality, the way we see ourselves, who we are, who we want to be as a nation, and what we represent to the world. What we represent to the world has a direct effect on the number of people who determine they want to join the jihadists movement and come after us.

It is a decision that can and should be left to Members of Congress who are the representatives of the American people. In the early period of the CIA program's existence, I repeatedly called—and I am extremely frustrated by this, extremely frustrated—for an Intelligence Committee investigation into the Agency's detention interrogation practices.

That was in the committee. I was, at that point, vice chairman and could not control, obviously, the vote. So on vote margins of one, we lost. We could not get anything going in the way of studying the subject and investigation of the subject. Then I moved to the floor and once again could not get the committee to investigate the subject. I also tried to have the CIA brief all the members of the committee on the interrogation program. That also did not happen.

I recognized that assessing the need for the CIA's enhanced interrogation techniques, the intelligence obtained from detainees, and the importance of maintaining America's position in the world were issues that we in Congress needed to debate and discuss, and, unfortunately, we did not.

About a year and a half ago, the full membership of the Intelligence Committee was finally provided information about CIA's interrogation program. It is the whole point of oversight. They are not accustomed to us doing that—not just the CIA, but the intelligence community—having representatives of the people asking questions. They think it is an elite field for them. They are proud of their traditions. They fight among themselves, and they do not build into their thinking what it is that the Congress might feel about this.

About a year and a half ago, as I say, we were brought into their interrogation program. Since that time, our committee has held multiple hearings on that subject. We have done our best to learn as much as possible about the basis for and the consequences of CIA's program, as well as interrogation in more general terms.

These briefings and hearings have led the committee to conclude that all agencies of the U.S. Government should be required to comply with a single standard for interrogation of detainees. The Army Field Manual provides a standard of humane treatment that indisputably complies with our international obligations under the Geneva Conventions, as well as with U.S. laws.

The CIA has briefed the committee on several occasions about its interrogation of al-Qaida detainees. The CIA has described the basis for the program, and why they think it should be allowed to continue.

Although the CIA has described the information obtained from its program, I have heard nothing—nothing—that leads me to believe that information obtained from interrogation using coercive interrogation techniques has prevented an imminent terrorist attack.

This is true for a very simple reason. Once a terrorist is captured, his fellow plotters, understandably, change their plans. In other words, I do not believe the CIA has ever been in an actual ''ticking timebomb'' scenario, nor do I think it is ever likely to be placed in that situation. That does not mean the information obtained from the program has not been valuable. Of course information about al-Qaida is exceedingly valuable from an intelligence standpoint. It is bits and pieces of information that allow our intelligence professionals to assess al-Qaida's capabilities and to determine how best to protect ourselves as a nation. But, more to the point, I have not heard nor have I seen any evidence that supports the intelligence community's claim that using enhanced interrogation techniques is the only way to obtain this type of intelligence; that is, to get what they need to get.

After 9/11, the intelligence community decided that coercive interrogation tactics were the best way to obtain intelligence. It was perhaps a little bit understandable then in terms of the general panic of the Nation. But the intelligence community—I say this gravely—did not take the time to research what interrogation techniques might be most effective to come to this conclusion, nor did they reach out to the interrogators with experience, particularly those questioning Islamic terrorists. They did not do that. They were going to do it their way. They simply assumed—and they simply still assume—that coercive interrogation techniques were the best way to obtain information.

To this Senator, this was clearly a flawed approach. But at this point, the administration is so invested in the use of these techniques they can no longer psychologically or otherwise step back to assess what methods are most effective to obtain intelligence. They go by the mantra, they go by what has been done before.

To address this question, the committee explored how other Government agencies conduct interrogation. The committee considered critical interrogations of individuals who do not want to disclose information—people who are hardheaded and do not want to talk—interrogations where obtaining information can prevent widespread injury or death.

Every day, military interrogators in Iraq and Afghanistan question individuals with information that can save lives—every single day—questions about where explosive devices are hidden, where captured soldiers have been taken, or where caches of weapons are stored, and a lot more.

Now, the CIA loves to argue: Oh, but they are just 18- to 20-year-old kids. They don't have the experience. We have experience. We have experience. We have been at it. We are the professionals. They did that at our public, open threats hearing a week or so ago.

Now, there is something called the FBI. They deal with pretty bad people, too. Their agents face life-and-death situations in both the world of terrorism and every-day criminality. Some of the individuals the FBI interrogate are senior leaders, individuals who are committed to staying silent and not sharing the information they possess. In fact, FBI agents recently questioned the top al-Qaida leaders who were formerly in CIA custody, gathering enough information from those al-Qaida leaders to build cases for trial, which we have recently read about.

Some of these FBI agents have been conducting interrogations for two or three decades. That does not sound like 18- to 20-year-olds. They are, without question, recognized experts in their field, and they are remarkably effective at obtaining the information they need. Yet both the FBI and the military have told us they do not need enhanced interrogation techniques. Are these naive organizations? Are these people who do not know what they are talking about? Are these people who do not have stakes at hand? They are out on the battlefield. They are not only at Guantanamo. They are out on the battlefield. They have told the committee the interrogation techniques included in the Army Field Manual provide them with flexibility they need to obtain the information they need.

Indeed, representatives from both the military and the FBI—both—stated emphatically they have the tools they need to obtain necessary and reliable intelligence.

After considering the CIA's arguments, and those of the FBI and the U.S. military, I am simply not convinced that harsh CIA tactics are necessary to obtain intelligence information.

We also had people who were neutral who had experience in interrogation but were not currently in the practice of it. Their information to us also was that to terrorize, to torture, to manhandle, to do whatever, does not work. Human beings are human beings, and there are ways to get at them. In fact, coercive interrogation techniques can lead prisoners—and probably will in many cases—to say anything at all for the purpose of stopping the interrogation. As a result, coercive techniques can produce information that is fabricated and ultimately lead to flawed and misleading intelligence reports. This is not academic or hypothetical. Bad intelligence is a real danger.

In the early years and months after 2001, we were awash with bad intelligence in Washington, DC, not all of it coming out of coercive techniques, but out of a complete misunderstanding of what intelligence is all about. In fact, there was a condescension from the administration about the role of intelligence in providing reliable information. So this is not an academic or hypothetical point. Bad intelligence is a real danger when employing coercive interrogation techniques.

Intelligence reporting from an al-Qaida detainee—a very famous one named al-Libi he said Iraq was providing al-Qaida training in chemical and biological weapons prior to the war, which was publicly trumpeted by the President of the United States, by the Secretary of Defense, by the Secretary of State, and other senior administration officials as proof of operating links between Iraq and al-Qaida and, therefore, as a basis for going in to invade Iraq.

Of course, basically all of us feel now that what the President said on March 23 in the other body, in his speech which gave him the authority to go to war, was based on intelligence which was almost entirely incorrect, and virtually everything he said, other than some rhetoric here and there—everything he said turned out to be wrong, and, therefore, was one of the most extraordinary disservices to the American people, not to speak of the dead and the wounded, that I can remember in my lifetime. But the Nation was inspired by the thought of fighting terror, and so on they went.

Ultimately, al-Libi, who said these things, recanted. He recanted, and it was determined by the CIA that he had fabricated this central allegation of this link between al-Qaida and Iraq and other information based on his claim of mistreatment during the interrogations.

So this is not an academic point. America went to war based on an alleged threat that was partially based on fabricated information produced under coercive interrogation.

Apart from the question of efficacy and the risk of bad intelligence, the committee has explored the consequences of having a different, secret standard of interrogation for the intelligence community. This is where the need for section 327 becomes clear.

Since the disclosure of information about the existence of secret prisons, and the use of harsh interrogation techniques, the reputation and moral authority of the United States have suffered dramatically. It is not a casual statement. One can say, yes, a lot of people have said that. But when that is true, that means that in Africa and Southeast Asia and South America and in the Middle East it becomes much easier for al-Qaida and those who would do us ill—and people within the United States who may belong to no formal organization like that at all—to develop anger, to develop a search for meaning to their lives because they do not see hope in their lives, and so they join. They join a group that will do damage. Some of our techniques have significantly increased the likelihood of that happening.

Rather than being a world leader in human rights, we have become known for the unapologetic use of aggressive interrogation techniques. Indeed, even Canada has included us on a list of countries that engage in torture.

Allowing the CIA to continue to use coercive interrogation techniques that are not part of the Army Field Manual is another piece of fodder for terrorist propaganda that cannot be underestimated. It is not just a rhetorical statement. It cannot be underestimated. It is no way to win the hearts and minds of the Muslim world. Ultimately, the war on terrorism is a war of ideas. Without a public standard of humane treatment, it is impossible to convince the world that we take our international obligations seriously, that we treat people humanely, and that we are a country of laws and we adhere to these laws.

We must uphold those standards that differentiate us from the terrorists whom we are fighting. If our Government continues to use secret interrogation techniques that many are convinced constitute torture, America's standing in the world will continue to go down even more. Every time it goes down, there are more people who sign up to do us harm.

The Israeli Supreme Court concluded, when it forbade the use of harsh interrogation techniques, the following:

> This is the destiny of democracy, as not all means are acceptable to it and not all practices employed by its enemies are open before it. Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the rule of law, and recognition of an individual's liberty, constitutes an important component in its understanding of security. At the end of the day, they strengthen its spirit and its strength and allow it to overcome its difficulties.

So in closing, passing section 327 is critical to regaining our moral authority in the world—which is a little bit too easy to say; it is going to take a lot more than that but it is a start—and convincing people that the United States believes in due process and human rights rather than fear. Having a separate standard of interrogations for the CIA—as much as it may want to have it, as much as it may have pride in having their secret standard, as much as they talk about 18- to 20-year-olds—is simply not worth the cost. I, therefore, urge my colleagues to support section 327.

But no matter how the Senate votes on this motion, if it comes up, the CIA should very carefully consider the actions of the House and Senate Intelligence Committee. All Members need to consider what this large group concluded. The members of our committees are the only Members of Congress who have been briefed on the program and who are privy to the administration's best arguments in support of the program. That has to be said from time to time, and it sounds a bit arrogant, but there are people on the Intelligence Committees, both in the House and the Senate, who get briefings, and they know things that are not necessarily known to the rest of the Congress. Yet despite those briefings, a bipartisan majority of both the House and the Senate Intelligence Committees have determined that it is in the Nation's best interest to have only one standard of interrogation, a standard that can be publicly judged by the entire world, and this judgment by the representatives of the American people—that is, what we did in the conference committee—cannot be ignored.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I compliment my distinguished friend from West Virginia. He has been a very bipartisan worker on the Senate Select Committee on Intelligence. I have been on that committee for an awfully long time, and I have a lot of respect for him. I just want to make that point for the record. I know he spends a lot of time trying to do his job well. We don't always agree, but we do agree on an awful lot. I particularly appreciate his work on the FISA bill. I know it is a very difficult position for him to be in. It is a very technical, very difficult bill, a complex bill, with a lot of matters conducted in public. I think he did a terrific job in seeing this bill through to the Senate floor.

I also would like to take a moment to thank my colleague and friend who works with me, Jesse Baker. He is a Secret Service detailee on my staff who has been invaluable in helping me prepare for the important FISA debate.

I also thank the very able counsel of the Intelligence Committee, Kathleen Rice, along with Jack Livingston, Mike Davidson, and Chris Healey, all of whom I think played a significant role in the FISA bill, among so many other things as well. I also would like to pay tribute to my colleague on the Intelligence Committee, my staffer who works with me, Paul Matulic, who is one of the most articulate and knowledgeable foreign policy people in government today. I am very grateful for his work and the effort he has put forth to try to assist me in these very difficult times and very difficult jobs.

This might be a historic week for the Senate Select Committee on Intelligence, at least in comparison with the last 3 years. Last night, we passed, after over a year of work and preparation, including the 6-month interim Protect America Act, the FISA modernization bill. I truly hope our House colleagues can expedite this bill and get it to the President for his signature before the legal regime governing our essential technical capabilities expires this weekend.

I wish to congratulate both the chairman, as I have said here earlier,

and vice chairman, Senator BOND, for their sustained efforts on this issue. It wouldn't have been passed without their sterling leadership and their willingness to make some tough calls and to stick to them.

I have often said I am metagrobolized—confounded, you might say—that we have heard about the asymmetrical advantages that our terrorist enemies have, while we are reluctant to use our own significant asymmetrical advantages to defend ourselves from these terrorists' intentions. The terrorists do have asymmetrical advantages, to be sure: They are substate actors, and they do not operate according to any national or international law, including the law of war. They hide among civilians, target civilians, and terrorize civilization. If al-Qaida could get its hands on a weapon of mass destruction, everything we know about them suggests they would use it against the West.

But we in the West also have asymmetrical advantages as well. Two significant advantages are our technological prowess and our adherence to the rule of law. Our technology, as we have revealed in more ways than I think prudent in our open debate, provides us unparalleled advantages in tracking the enemy. Our collection has prevented terrorist attacks against us, and our continued collection makes the enemy dedicate a significant amount of its time to avoiding us—time that it would use plotting against us. In this sense, our technological collection is not just a defensive tool but an offensive tool as well. Americans and their leaders are right to expect that all of this Nation's activities should adhere to the rule of law, and this long debate over FISA modernization should, at the very least, assure everyone that we adhere to a legal regime, even when it seems aggravatingly slow to adjust it to modern technology and threats unimagined in the 1970s when the original FISA Act was enacted.

So I again wish to congratulate the chairman and the vice chairman for their leadership in getting this important piece of legislation passed, finally, last night. It was a major banner day for us. This bill was long overdue, and I give credit to those who have worked so hard—long and hard—to see that it was done.

The passage of an intelligence authorization bill is also an important measure of how we advance the rule of law. The balance of powers so beautifully articulated in our system of government requires an active role for this body and, since the 1970s, we have institutionalized a role of oversight for intelligence in the two committees of the Senate and the House.

Our principal vehicle is the authorization bill. This process has been derailed for several years now, as Members operating with individualized agendas have created a dynamic that has thwarted the institutional need for authorization. It is a fact that, if some concede that an authorization bill is not essential, the self-moderating dynamic that keeps one from offering controversial amendments on a bill is removed. We have seen this with the foreign relations authorization bills. I don't want to see it happen with the intelligence authorization bill.

This year's bill has some very important measures in it, most of them in the classified annex and therefore not subject to discussion now. It is, after all, an authorization for the intelligence community—or IC—which does, after all, require a minimum of secrecy to function effectively. The bill does have measures in the unclassified annex worthy of passage, however, to include additional and needed authorities for the Director of National Intelligence, directions on personnel level assessments for the IC, directions on business enterprise architecture modernization, and limits on excessive cost growths of certain systems.

The bill, however, has been strapped by a provision added during conference that was not a part of either the House or Senate bills going into conference that would in this case limit all IC interrogation techniques to the Army Field Manual. Now, this provision is widely seen as a prophylactic against the use of torture, and there begins the misconceptions.

The United States does not torture. Whether the process known as waterboarding constituted torture when it was used in three cases in the past—and we cannot discuss exactly how it was used here—is a debate to be held among historians and scholars of the law. I do not wish to inhibit that debate. I also do not wish to violate U.S. domestic law or international law to which we are committed as a nation. The rule of law serves our advantage.

But the conflict over what was lawful in interpretation in the first 2 years after the 9/11 attacks recognizes, to the honest analyst, that there is murkiness at the intersection of law, policy, and legal interpretation. That has always been the case. As I say, I do not want to inhibit this debate.

I also do not wish that historic debate to inhibit any techniques we need to use for interrogation today. Last week, in an open session of the Senate Select Committee on Intelligence, Director Mike Hayden—General Hayden—spoke forcefully, openly, and articulately about the issue of waterboarding. He said in public that, No. 1, less than one-third of less than 100 detainees held by the CIA since 9/11 have ever been subjected to enhanced interrogation techniques. No. 2, of that small sample, only three have been subjected to waterboarding. No. 3, waterboarding has not been used for almost 5 years. Yet we have heard nothing but screaming about this issue, as though it was relevant today.

As Director Hayden went on to state, there is a universe of lawful interrogation techniques. This includes FBI procedures, the Army Field Manual, and the enhanced interrogation techniques used by the CIA, but which, I repeat, does not include waterboarding today. The DCI made it plain—the Director of Central Intelligence made it plain that the CIA will play to ''the edges that the American political process allows us. It is our duty to play to that edge.'' The DCI also made it clear that if the Congress directs that line is set by the Army Field Manual, then that will be the line in law that CIA officers will respect and adhere to.

So Congress must act soberly and responsibly in addressing the question of enhanced interrogation techniques. As the hearing last week made clear to anyone listening, the various approaches—FBI techniques, DOD's Army Field Manual, and CIA's enhanced techniques—address various subjects under different circumstances with different sets of goals. Director Maples told me he could not imagine that anyone would have objected to the use of current enhanced techniques if they could have gained the intelligence that would have prevented the attack on the USS Cole.

In my mind, the greatest advantage of the enhanced interrogation techniques is the public ambiguity surrounding the fact that they are classified. I don't want an al-Qaida operative we have just wrapped up to know what is in our playbook. But I want to make clear, ambiguity is not—I repeat, not—a cloak for torture.

I can't go into details here, but I can say I have been constantly amazed as I have studied this issue in the Intelligence Committee over some of the sanctimony that has been used by some people on the Senate floor addressing this issue, and off the Senate floor as well. I can quite comfortably say there are actions the American public has routinely witnessed on some of our most popular television police shows over the past two decades that would exceed anything in the enhanced interrogation techniques allowed by the CIA. I find this to be ironic.

I cannot support this conference report if it has the language limiting interrogation to the Army Field Manual. This is a manual written for our soldiers, all of whom I think we all agree are brave, dedicated warriors, but most of whom are young and inexperienced in the needs of interrogation. They should have their manual. I must point out, however, that Army Field Manuals are subject to revision by the Executive at any time, so that we in Congress are acting a little too self-satisfied by this simple gesture if we actually believe we are rectifying the rule of law.

I say, let's have this debate and let's really define what it is we wish to proscribe, and let's understand the needs of our intelligence and the consequences for our actions—consequences that could be very grave if we keep playing games with these issues—or should I say political games. Both would be wrong, in my opinion.

Much of this debate must be classified, but the Senate has procedures for closed sessions, and, after all, the Senate Select Committee on Intelligence was created for just this need. I serve on that august committee, and I have served on it for a long time.

Sometimes I feel as if I am on the corner of sanctimony and righteousness. Sanctimony has popular appeal—it gains the approving tut-tutting of the chattering masses. Often it is more bombast than substance, more Babbittry than bravery. Righteousness is not always a function of the approval of the masses. Those who go to war to defend do things that are lawful but sometimes unpleasant—sometimes very unpleasant. In the choice between sanctimony and righteousness, I will choose the latter.

I do not wish to calumniate anyone in this debate. I presume that people are motivated by the purest of motives, as is always the case in the Senate—or should I say I hope it is always the case in the Senate. I wish, however, that we had more substantive debate on some of these difficult questions.

So because this conference report includes a measure limiting interrogation techniques for our intelligence professionals in the Army Field Manual—a measure added at the last minute in conference, something that was in neither bill, the House's or the Senate's—I will vote against the conference report and urge us all to reengage in this debate so that the lines of law we draw, that our intelligence professionals will respect, are lines that also maintain our best defenses within the rule of law.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. VITTER. 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. VITTER. Mr. President, I ask unanimous consent that I be permitted to speak for 15 minutes as in morning business and to yield some of that time to the distinguished Senator from Pennsylvania who joins me on the floor.

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

NOMINATION OF DAVID DUGAS

Mr. VITTER. Mr. President, I come to the floor with welcome support of the distinguished Senator from Pennsylvania, who serves so ably on the Judiciary Committee, to talk about the pending nomination of David Dugas to fill a vacancy in the Middle District of Louisiana.

This is a vacancy that has existed for over a year, and, in fact, coming up very soon in March will unfortunately, if we do not act before then, will be noting the 1-year anniversary of the nomination of David Dugas to fill this vacancy in the Middle District of Louisiana, of course nominated by President Bush.

Mr. Dugas is currently U.S. attorney in that same district. In that capacity, of course, he had to come before this Senate and be confirmed; and he was by unanimous consent. So that was a very resounding confirmation of him, which included support by my colleague from Louisiana, Senator LANDRIEU.

In terms of this judicial nomination, Mr. Dugas has received the highest rating possible by the American Bar Association. He is eminently qualified. There is nothing in his background or his dealings or his job as a U.S. attorney that remotely suggests otherwise.

Yet there has been great delay and obstructionism, in my opinion, in terms of considering this worthy nomination. In fact, even though we are coming up on the 1-year mark of President Bush's nomination of him, he has yet to receive a hearing before the Judiciary Committee because my colleague, Senator LANDRIEU, has not turned in her so-called blue slip.

I rise to make note of this, and in a few minutes I will have a unanimous consent to propose to the Senate to remedy this situation. I have also specifically invited Senator LEAHY, Chairman of the Judiciary Committee, and Senator LANDRIEU, my colleague from Louisiana, to join us on the floor for an appropriate colloquy.

With that introduction, I yield such time as he would consume to my distinguished colleague from Pennsylvania, the ranking member of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I join the Senator from Louisiana in his request to have a hearing and then proceed with an up-or-down vote. I have reviewed the record of the nominee. It appears to me that the nominee is qualified for the position.

In his service as a U.S. attorney, he has already had Senate confirmation. But the basic proposition of having a hearing and a vote, I think, is very fundamental to so many pending nominees beyond the nominee addressed by the Senator from Louisiana today.

I have discussed this issue on a number of occasions with the senior Senator from Louisiana, and she has been of the view that she ought not to return the blue slip, and I respect her decision. But I also respect the position of Senator VITTER in trying to move forward.

It would be my hope that we could come to some accommodation, that we could find some way to set a timetable for a hearing, at least on that.

Senator VITTER has advised me that he has written to both the distinguished chairman and the senior Senator from Louisiana and that there is to be a unanimous consent request. I know Senator VITTER will await the arrival of someone who can object because my expectation is a unanimous consent request will be objected to. But the issue involved is to raise the issue and to make the point as to what has happened and to try to see if there can be some accommodation, as noted by the floor discussion today.

I see Senator VITTER nodding in the affirmative. In my capacity as ranking member on the Judiciary Committee, I would like to get these nominations to move forward.

I yield the floor.

Mr. VITTER. I thank the distinguished Senator from Pennsylvania, first for his service on the Judiciary Committee; it has been very distinguished, to serve there as many years very ably, now-ranking member, and specifically for his support on this nomination and others to try to break through the gridlock, break through the partisanship, move forward in a positive way for the country.

I believe that is absolutely necessary in a number of cases, but the one that surely hits closest to home for me is this nomination of David Dugas to a judgeship in the Middle District of Louisiana. So I thank the ranking member for all his help and support; I know it will continue.

Again, let me note I wrote to Chairman LEAHY that I would be taking the floor this week to make the upcoming unanimous consent request. I did the same to my colleague from Louisiana, Senator LANDRIEU. As soon as we figured out the time that would be available, we sent them word, and I sincerely hope they can both join me on the floor because I think it would be very useful and very informative to have an appropriate discussion and colloquy about this case. So I certainly invite that. I would encourage them to accept the invitation to join me on the floor.

Let me point out and reiterate some very important points about this nomination. President Bush made the nomination some time ago. That was March of last year. We are coming up quickly on the 1-year mark of this nomination. The vacancy in the Middle District has been open even a little bit longer, over a year.

Because of that, a backlog of cases is quickly mounting in the Middle District. The Middle District is an area surrounding Baton Rouge, LA, the capital of the State. It has felt a huge influx of people, of residents, and of litigation, largely because of Hurricane Katrina.

Because of that, because of this vacancy, judicial backlogs have been mounting and mounting. We are not quite to the point—and this is defined in law and by rules of the court—we are not quite to the point that it is defined as a ''judicial emergency,'' but we are quickly coming up to that line.

So the people of Louisiana, the people of the Middle District are not being served well and properly and as quickly as they should be. This vacancy needs to be filled for that reason.

Now, let us look at the man who President Bush has chosen to fill the

vacancy. By all accounts, he is eminently qualified. Mr. Dugas is the sitting U.S. attorney in the Middle District. He has done a very fine job in that position, has won praise from many different quarters, particularly from law enforcement.

He has many admirers and allies in the law enforcement community: Sheriffs across the State, chiefs of police, district attorneys, many others. They have written in to many of us about this nomination in strong support.

Mr. Dugas was already considered by the Senate, of course he had to be, for his present job of U.S. attorney. He was considered very favorably. In fact, it was considered completely noncontroversial, and he was confirmed swiftly by unanimous consent. In that process, of course, my colleague, Senator LANDRIEU, was here at the time and was part of that very positive sweeping confirmation.

As I said, for this judicial vacancy, Mr. Dugas has received the highest rating possible by the American Bar Association. That is a distinguished professional organization, it is not political, it is certainly not leaning to the right. Nobody would think that. They have rated this nominee of President Bush with their highest rating possible for a judicial nomination.

Yet this languishes and languishes. In another month's time, we are going to be on the 1-year mark of the nomination, with this backlog of cases mounting, as we near a judicial emergency in the district.

I do not think that is right. I do not think that is serving the people of Louisiana at all. I do not think that is serving the people of the country at all.

Mr. Dugas deserves better. More importantly, the people of Louisiana deserve better. The people of Louisiana and of the country want us to act as grownups and to come together and do our work in a timely, respectful way. They don't think this sort of partisanship and obstructionism, particularly over judgeships, falls into that definition.

This got particularly bad a few years ago. I was hopeful. Since I have been here, not because of my influence but just in general, since I got here, the Senate has become more responsive and more responsible about nominations, particularly judicial nominations. Unfortunately, this is a clear example in the other direction. Let's clear up this example. Let's move it off the list of those examples of partisanship and obstruction. Let's act in a reasonable—late, by now, but reasonable way, finally moving forward with this highly qualified nominee before this district gets to a state of judicial emergency, which is looming.

That is my simple and reasonable request. With all that background, I will now propound a unanimous consent request.

I ask unanimous consent that if the Committee on the Judiciary has not held a hearing on PN 349, the nomination of David Dugas of Louisiana to be U.S. district judge for the Middle District of Louisiana, and reported the nomination to the Senate by March 19, 2008, which would be the 1-year anniversary of his nomination being transmitted, that on the next calendar day the Senate is in session, the Committee on the Judiciary be discharged from further consideration of the nomination; that the Senate proceed to executive session to consider the nomination; that there be 1 hour of debate equally divided between the chairman and the ranking member of the Committee on the Judiciary or their designees; that upon the use or yielding back of such time, the Senate immediately proceed to a rollcall vote on the nomination; that if the nomination is confirmed, the motion to reconsider be considered made and laid upon the table; that the President be immediately notified of the Senate's actions; and that the Senate then resume legislative session.

The PRESIDING OFFICER. The Chair, in my capacity as a Senator from the State of New Jersey and on behalf of the majority leader, objects.

Mr. VITTER. Of course, I am disappointed—not surprised but disappointed—at the objection.

I resume my plea specifically to Senator LEAHY, chairman of the committee, and to Senator LANDRIEU, who has not turned in her blue slip and is thus the reason for the committee not even holding a hearing, that we move beyond this, that we have a hearing on this eminently qualified nominee. If there is a reason to stop the nomination, surely a hearing is the best venue and the best vehicle to illustrate that and talk about it. I hope we move beyond the pure obstructionism and partisanship that has us stuck in the mud with a judicial emergency in the Middle District looming.

This is exactly the sort of obstruction the American people are tired of. They spoke clearly to this over the last several years about judicial nominees. Maybe we got a little better, but here we are again in terms of this matter and this case which is surely important to Louisiana. I urge all of my colleagues to work beyond this. Specifically, I urge the chairman of the Judiciary and Senator LANDRIEU to work beyond this. It is unfortunate that they couldn't accept my invitation to have a useful, informative dialog and colloquy on the issue on the floor. There has been no good explanation for inaction that I have ever heard. A lot of people would like to hear some discussion and explanation. I hope we will hear that soon. I hope in the very near future we will move toward an appropriate resolution of this matter, which is a hearing and a vote in Judiciary and then on the floor of the Senate.

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

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

Mr. DORGAN. Mr. President, we are considering the intelligence authorization bill. My understanding is later this afternoon we will have, perhaps, a final vote on the bill. There are many important provisions in the bill. Many of us who have been here for some while—from the destruction of the World Trade Center and the murder of thousands of innocent Americans on 9/11, where terrorists used airplanes loaded with fuel as guided missiles to bring down the World Trade Center and attacked the Pentagon and through the subsequent period leading up to the Iraq war—know we have had all kinds of difficulties with the intelligence community.

We have a lot of men and women risking their lives all around the world every day collecting intelligence, and yet most of us have been through top secret briefings that we later find out to have been absolutely false, wrong, just standing facts on their head.

So it is critically important for this country to have a good system of intelligence gathering and good analysis of intelligence if we are going to prevent the next terrorist attack against our country.

It is a difficult world out there. We have terrorists who would like nothing more than to kill Americans and attack our country. So passing an intelligence authorization bill that provides the resources, provides a structure for a good system of intelligence is very important to the safety and the security of this great country. That is what the debate is about. That is what the upcoming vote is about.

But there is one provision that has caused a special concern for some in this Intelligence reauthorization bill, and I want to talk about it a bit. That is the provision that deals with the subject of torture.

One of the most important provisions in this legislation is one that makes the Army Field Manual provisions on interrogations applicable to all U.S. Government personnel. Right now, those provisions which forbid torture apply only to the military. Those provisions do not apply to some others that are conducting interrogations on behalf of our Government. That means that some others who work for the U.S. Government—the CIA, for example; contractors, for example—may use interrogation techniques which may constitute torture and which are forbidden in the Army Field Manual. This legislation incorporates the Army Field Manual provisions on interrogations and says it applies to all personnel from the United States.

Now, why is that important? Because it makes a vote for this bill a vote

against torture. It is a vote that says American values and torture are not in any way compatible. Voting for this bill is a vote for a country that has been looked up to throughout the world because of our system of values. It is that simple, and it is that important.

Let me say that I acknowledge today there are tyrants and despots and dictators and a lot of evil people in this world and throughout history who have used and have always justified the use of torture—but not this country. We have not done that, with the exception of some recent disclosures I will talk about.

Some people argue that this issue of torture is especially about waterboarding. Waterboarding is a more antiseptic term. It should be described as water torture. Some people say that: Well, we have waterboarded. In fact, it has been disclosed by administration officials that we have waterboarded—which is water tortured—three of the most dangerous, despicable terrorists who attacked this United States, and we only did it at a time when we thought they would provide information or had information that would allow us to avoid other catastrophic attacks, and we need to be able to do that again in the future, if necessary, if some despicable terrorist is planning an attack on this country.

Let me talk a little bit about what we are describing here. waterboarding is a practice that has been around for centuries, and it has been known—widely known—as torture for a long time. In fact, waterboarding has been prosecuted as torture and as a war crime on many occasions in history. Trying now to claim it is legal, that it is not torture, or that it is something other than torture doesn't square with the facts. Second, history teaches us that torture is not effective. Aside from the question of morality, it is not effective. Those who know tell us that those being tortured will often tell you anything they think you want to hear in order to have the torture stopped.

The provisions in the Army Field Manual set forth the many approved methods to get reliable information, but those methods do not include what is defined as torture.

The question about torture is: If you decide that torture is appropriate and available as a tool for our country to use, why stop at waterboarding? There are many other forms of torture that are even more heinous, more abusive: putting people in boiling water, pulling out their fingernails, amputations, electric shock. Justifying torture is a very slippery slope that doesn't have a pleasant end for a country that cares about its system of values. We don't do that and haven't done that. We haven't been engaged in torture as a country for a couple of centuries because we don't belong to that group of people in the world who want to do damage and want to commit mayhem and want to kill others. We hold ourselves to a higher standard in this country—always have—a higher standard, a standard that all of us can be proud of.

It is interesting when you think back to the Cold War. We won the Cold War, but we didn't win it with bombs and bullets; we won it with American values and American standards, and American rights. The other evening I saw a very large portion of the Berlin Wall that had been transported to the United States of America. It was a wall that kept the free world out and it was a wall that kept those in East Germany behind it, living in oppression, living in a circumstance where they were denied freedom. I was thinking again about the Cold War and the fact that we didn't win the war with bombs.

I have in my desk something I have had there for a long period of time, if I might show it by unanimous consent. This is a piece of a wing from a Soviet Backfire bomber. This bomber very likely carried a nuclear weapon that would have been used against the United States. Actually, we sawed part of the wing off this Soviet bomber because when the Cold War was over, we reached an agreement to destroy delivery systems. I have also in my desk a hinge. This hinge used to be on a missile silo that held a missile with a nuclear warhead on its tip aimed at a U.S. city. It was in Ukraine. Where that missile used to sit, there are now sunflowers growing. It is now a sunflower field. The missile is gone, the warhead is gone. This bomber is now in pieces.

We won the Cold War. And we have agreements with Russia, Ukraine and other former Soviet republics under which we help destroy their Cold War weapons and delivery systems. But we didn't win the Cold War with bombs; we didn't blow up that Backfire bomber. We didn't blow up the Soviet missile silo with one of our missiles. We won the Cold War because of our values. American values won the Cold War.

What are those values? Well, people are free. They believed what they said. They believed what they wanted. The Government had to respect the rights of everyone in this country. We were a country that had a government based on a Constitution that had a Bill of Rights that applies to all Americans. Our country stood for liberty, human rights, human dignity, the rule of law. That is what won the Cold War. Those values were so strong that in the middle of the Cold War with the Soviet Union, those values shone a light of hope into the darkest cells and the deepest part of the Soviet Union. In the gulag prisons, in the outermost reaches of Siberia, those values reached those cells. Millions of prisoners had been held, often in solitary confinement, simply for thinking and speaking freely. Many were there for years; some swept off the streets, never to reappear again; many tortured into false confessions, and many murdered. Some survived, however, and talked about their experience, and about how important the idea of America was to them, how important the idea of freedom was to those who had been detained and had not been able to experience freedom, and to those who had been tortured by a country that didn't want them to be free. It was a clear and vast difference between America and the Soviet Union. As imperfect as we are, the basic foundation and bedrock of values in this country is what shined so brightly in the middle of the Cold War. It wasn't the amount of bombs and bullets each country had; it was what we stood for.

When the Berlin Wall fell in 1989, the Iron Curtain was lifted, all of those police states crumbled, and every single one of them became free countries that provided freedom to their citizens. Every single one chose freedom and democracy. That is how powerful the idea and the values of this country have been.

What I say today is we have to regain the moral high ground and describe our values in circumstances that make it clear that we do not subscribe to some things others might. We do not support torture. We will not support torture. It is not what our country is about. From the very beginning in this country, America has held itself to a higher standard. George Washington, leading the Continental Army—think about it: 5,000 soldiers in the Continental Army going up against a British Army of 50,000 soldiers, and our 5,000 were shopkeepers and farmers; 5,000 against 50,000, and we prevailed over time. George Washington, after a large number of his troops were captured and slaughtered—he saw the Hessian mercenaries kill unarmed prisoners. After that, George Washington and his troops captured a large number of British soldiers, and many of the troops justifiably wanted revenge. They sought to execute them just as they had seen done to unarmed American prisoners. George Washington refused. He refused to treat the prisoners as his soldiers had been treated. He insisted America was different. He said: We are different, and we are going to treat people the way they should be treated, not the way they treated us, and that has been our birthright.

That is why this discussion right now is so very important. It goes to the core of what we are and who we are as a nation. Quite simply, we have to say unequivocally: We are against torture. We, the Congress of the United States, must say that torture is un-American, simply because it is. No hair splitting, no fancy words, no legal distinction about what might or might not be torture. That will begin to restore, I think, our rightful place if we say we are against torture.

Let me briefly continue to say that being against torture is being for an America that is better than its enemies. It is that simple. I said we fought and won the Cold War after many decades. We faced nuclear annihilation during that period. We faced a

ruthless enemy all around the world, and yet we won that war. We did that with our reputation, our values, and our moral authority intact. It was and still is, I think, a beacon of hope around the world.

Those values and that moral authority, I believe, are what is going to allow us to prevail in the battle against the terrorists who wish to do harm—not just here but in other parts of the world as well. We need—and I believe the world needs—an America that people respect and admire, an America that is different, that begins in a manner that is loud and clear saying: We do not torture. This will empower our country and make us stronger.

I was very disappointed last week to hear the head of our intelligence service, and then to hear a spokesperson for the White House, say: Yes, we have waterboarded. They used the term—the right term—water torture; yes, we have done that. We did it because we must, and we reserve the right to do it again. It is exactly the wrong thing for this country. It is not just me saying that. I am not just quoting George Washington who has established the higher standard, and God bless him for doing so. Let me read what General Petraeus said, who leads the American troops in Iraq right now. Our most senior commander in Iraq, GEN David Petraeus, sent a letter to every Soldier, every Sailor, every Airman, Marine, and Coast Guardsman serving in Iraq. He said this:

> Our values and the laws governing warfare teach us to respect human dignity, maintain our integrity, and do what is right. Adherence to our values distinguishes us from our enemy.
>
> This fight depends on securing the population, which must understand that we—not our enemies—occupy the high ground.

Continuing to quote:

> Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows us that they also are frequently neither useful nor necessary.

That is General Petraeus, who leads our troops in Iraq, and says those who believe that torture is appropriate would be wrong.

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

Mr. DORGAN. I am happy to.

Mr. DURBIN. I thank the Senator for his comments, and I thank Senator FEINSTEIN for the support language. Some argue that this language was not necessary, that the McCain amendment, which passed 90 to 9, made it clear that whether you are in uniform or not torture is not the policy of the United States. Others argue that the Geneva Conventions had already made that clear for decades before it was brought into question by this administration.

I ask the Senator from North Dakota if he struggles with the same thought that I do. At some point after World War II, we prosecuted Japanese soldiers who tortured American prisoners of war using waterboarding and charged them with war crimes; and we are now at a point in our history, some 60 years later, where General Hayden testifies under oath before Congress that our Nation engaged in the same conduct, at least three times previously, when it came to waterboarding. I wonder if the Senator from North Dakota struggles with the same concept of justice as was applied after World War II and as it appears to be applied by this administration?

Mr. DORGAN. Mr. President, that is a significant contradiction for our country. I was as surprised and disappointed as the Senator from Illinois was to have one of the leading officials in this administration testify under oath that, yes, in fact, waterboarding had been used. It was in fact legal, they said, and it would be used again, if necessary, and could be sanctioned by the President of the United States.

The Senator is correct that this Congress passed a piece of legislation that defined waterboarding as torture and prohibits it, and the President at the White House, in a signing statement accompanying the legislation, essentially said: It doesn't matter so much what the legislation says; what matters is what I will decide to do.

Now, we have a disclosure—a public disclosure—to the world that this country has employed a technique that has, for hundreds of years, been described as torture.

I know and understand the passions that exist. I understand what I would like to see done to Osama bin Laden when he is captured. I understand the passions. But I also understand that what has given this country a different standing in the world is our value system.

Again, let me, if I might, for the Senator from Illinois, refer back to George Washington, which I described earlier before the Senator came on the Senate floor. When I think of the odds facing the Revolutionary Army, it is pretty unbelievable. The Senator from Illinois and I were at Mount Vernon recently, and we saw a display describing that at one point there were 5,000 soldiers in the Continental Army and 50,000 British soldiers. That was the fight. Our soldiers were shopkeepers and farmers, ordinary folks off the street. Theirs were trained British soldiers. So it was 5,000 to 50,000. George Washington and his soldiers saw members of the Continental Army captured and then, unarmed, murdered, executed by the British soldiers and the Hessians.

Washington's soldiers, when capturing some British soldiers, wanted to do the same thing. But he said, nothing doing, we are not going to do that. George Washington said that we are different and we are going to treat people the way they should be treated, not the way they treated us.

When you think of that set of standards and values and then wind your way through the discussion in recent days, and to have a top U.S. official say, yes, we have used waterboarding—and it is widely acknowledged as torture—we used it and it was legal and we intend to use it again if it is necessary.

Mr. DURBIN. I am sure the Senator is aware that this questionable chapter in American history—which I think will haunt us for generations to come—also involves people other than the general who testified. There is an individual who has been nominated by the President to be head of the Office of Legal Counsel, Steven Bradbury. He has been rejected four times by the Senate. The President said last week that he was the most important appointment. A month or two before, he told the majority leader he didn't want to talk about any other appointments until Mr. Bradbury was approved. Bradbury's tenure in the Office of Legal Counsel goes back to the period of time when this administration was rewriting torture policy in America—a policy which they at one point accepted and later rejected. Many of us have said if Mr. Bradbury is coming before us for consideration, we want to see those memos written—memos which James Comey, former Deputy Attorney General, said the United States would be ashamed if they ever became public.

I say to the Senator from North Dakota that not only do we have to do our part, but this administration has to do its part as well. Those who were engaged in this questionable—if not embarrassing, if not shameful—conduct involving torture policy must be held accountable to the administration. They are certainly not deserving of a promotion, which is what they are suggesting for Mr. Bradbury.

I ask the Senator from North Dakota, reflecting on what this administration has been through, the many times they have told us torture was not being used, that waterboarding was not being used, and now with this disclosure of at least three instances admitted under oath, I wonder if even this legislation—including the Feinstein amendment—would restrain this President in the future, in the next few months, as we face challenges that we cannot even imagine at this moment.

Mr. DORGAN. Mr. President, it is far more than disappointing to me, and I think to a lot of people in this Chamber and across the country, that the President received advice from people who work for him in the White House and have said this under oath and on television and in every other venue that under the Commander in Chief powers, the President has the power to do almost anything. He can put out a drift-net and collect every communication under every condition—e-mails and telephone calls. Go to the documentary recently done, entitled ''No Way Out'' and view the interviews by this administration's officials, who take the position that this President has the authority as Commander in Chief to do almost anything. That includes this issue of torture.

The point I make is that we have a piece of legislation that we will vote on later this afternoon. Included in that legislation is a provision that says the Army Field Manual will describe the conditions of interrogation of enemy combatants. I just read what General Petraeus said to all of his soldiers—that torture is inappropriate and will not be allowed. The Army Field Manual prevents torture. What we are saying in the conference report that we will vote on in an hour or two is that the Army Field Manual's restrictions on torture apply to all U.S. Government officials and contractors doing interrogation.

My concern about this administration—and I think it is echoed by the Senator from Illinois—is that they have decided they are not bound by the law, they are not bound by what the Congress enacts. They are doing other sorts of dances with signing statements and interpretations of the Constitution to say that under the Commander in Chief powers they can do almost anything if they believe there is some kind of a threat. That is a very dangerous mind set, in my judgment, for any administration at any time.

Mr. DURBIN. If the Senator will yield for one last question, I thank him for that quote from President Washington which talked about the terrible circumstances the Continental Army faced and how, in those days before there even was an America, they would establish a different set of values in this part of the world. He admonished his troops to live by those values.

I am sure the Senator knows that each year our State Department publishes a report card on human rights of nations around the world. We are critical of nations that engage in torture. We are critical of nations that engage in conduct that is inconsistent with our values. I say to the Senator from North Dakota, how can we maintain that moral status and moral authority if we are found compromising something as fundamental as torture and waterboarding and the Geneva Conventions, which guided us for decades?

Mr. DORGAN. The Senator answers the question by phrasing the question. Let me conclude by saying this: We have 43 top retired military leaders of the U.S. Armed Forces who have written a letter. As one, they say:

> We believe it is vital to the safety of our men and women in the uniform of the United States not to sanction the use of interrogation methods it would find unacceptable if inflicted on our captured Americans.

Today there are men and women fighting for this country. If captured, how would we react if the leader of a group that captured them says: We are torturing them because we feel we can get information, and we can only get it by torturing them, and we believe torture is legal. We are going to waterboard them, we believe it is legal. We have already done it, and we intend to do it again if we need to.

How would we feel if that were somebody else talking about how they are going to treat American soldiers? That is unacceptable. We have a country with a higher moral purpose and standards that have served us for two centuries, and we should not obliterate that just because we have some people in this administration who believe it is appropriate. It is not.

JOHN MCCAIN knows that. He led the fight to put a provision in law that prohibits torture. This President did a signing statement next to the legislation he signed, saying: I don't have to abide by it if I don't feel like it.

That is a scary thought in a democracy. I hope this afternoon we will register a very strong vote in support of this conference report and against the concept of our country engaging in torture.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the vote on adoption of the conference report to accompany H.R. 2082, the Intelligence Authorization Act, occur at 4:30 p.m. today; that no points of order be in order; and that the time until then be equally divided between the two leaders or their designees.

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

Mr. REID. So there is an equal balance of time in the next—we have 2 hours. I think it should work out fine. Either side will have approximately an hour, so that should work out well.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, I want to follow the lead of the distinguished Senator from North Dakota and my friend, the Senator from Illinois, and continue on this question with the determination the Government has made that waterboarding is legal.

It is a question that matters so much to wary and watchful nations, disheartened and distrustful in the wake of 7 years of failed leadership and broken promises. It is also a question that matters immensely to the billions of men, women, and children around the globe who look to this country, the United States of America, as a beacon of light that shows the way nations ought to act and the way the world ought to be. It is a question that matters to the American people who are sick of asking: Is it wrong? and being told: Well, it depends.

The people of America still do not know how this came about—in particular, how the Department of Justice came to approve this sordid technique. I believe we are in a position where the concerns we have about torture overlap with some of the concerns we have had in this Chamber about the independence and integrity of the Department of Justice. Here is what we know.

We know that Attorney General Michael Mukasey has said that ''the CIA sought advice from the Department of Justice, and the Department informed the CIA that [waterboarding's] use would be lawful under the circumstances and within the limits and safeguards of the program.'' We know in 2002, John Yoo of the Office of Legal Counsel drafted a memo, later approved by Assistant Attorney General Jay Bybee, which reads, in part:

> There is a significant range of acts that, though they might constitute cruel, inhuman, or degrading treatment or punishment, failed to rise to the level of torture.

As Evan Wallach of the Columbia Journal of Transnational Law has written:

> None of the Memo's analysis explains why waterboarding does not cause physical or psychological pain sufficient to meet the criminalization standards it enunciates.

We have asked for further clarification, but in a hearing before the Judiciary Committee, Attorney General Mukasey refused to comment on the legality of waterboarding because the technique was not currently in use and because of what he described as ''the absence of concrete facts and circumstances.'' Even though the Department of Justice is now conducting an investigation into whether tape recordings of alleged waterboarding sessions were improperly destroyed, they would not look into whether the conduct on the tape was in and of itself improper.

The argument is that no one who relies in good faith on the Department's past advice should be subject to criminal investigations for actions taken in reliance on that advice, which raises the question within the question: How did that advice come to be given in the first place?

How did the best and brightest of the Department of Justice overlook the facts of the history of waterboarding prosecutions in which the United States was directly involved, and why was such guidance approved when contravening precedents appear clearly to be in evidence?

Mr. President, I commend to my colleagues the article written by Evan Wallach, Columbia Journal of Transnational Law, entitled ''Drop by Drop: Forgetting the History of Water Torture in U.S. Courts.'' The full cite is 45 Columbia Journal of Transnational Law 468 (2007).

Mr. President, the U.S. Government long considered waterboarding a form of torture, prosecutable as a war crime and punishable accordingly. This history includes war crimes prosecutions against Japanese soldiers who waterboarded American aviators in World War II, the use of water torture by U.S. soldiers in the Philippines, and even an incident of waterboarding by a local sheriff prosecuted by the Department of Justice itself. Let me start with that.

I am reading from the Wallach law review article in which it reports:

> In 1983, the Department of Justice affirmed that the use of water torture techniques was indeed criminal conduct under U.S. law.

A sheriff in a Texas county waterboarded prisoners in order to extract confessions. Count one of the indictment asserted that the defendants conspired to—and this is a quote from the Department's own indictment—''subject prisoners to a suffocating 'water torture' ordeal in order to coerce confessions. This generally included the placement of a towel over the nose and mouth of the prisoner and the pouring of water in the towel until the prisoner began to move, jerk, or otherwise indicate he was suffocating and/or drowning.''

The sheriff and his deputies were all convicted by a jury under count one. It didn't end there. The case then went up on appeal, and the United States Court of Appeals for the Fifth Circuit rendered a decision. I have in my hands *United States of America* v. *Lee*, 744 F.2d 1124, decided in 1984, in which they gave appellate review of these convictions.

Finally, at sentencing, U.S. District Judge James DeAnda's comments, according to the article, were ''He told the former Sheriff that he had allowed law enforcement to fall into 'the hands of a bunch of thugs. The operation down there would embarrass the dictator of a country.' '' That is the opinion of a U.S. district court judge at a sentencing on waterboarding.

How is it that when the Department of Justice, the Office of Legal Counsel were asked for their opinion, they were able to write this opinion? I have it in my hand. This is the unclassified version. It has been substantially redacted. Even so, it is 50 pages long—50 pages long. They did 50 pages of legal research and could not find a U.S. Court of Appeals case in which the Department of Justice itself had brought the charges? Here is the case, United States v. Lee. It describes the facts:

> Lee was indicted along with two other deputies, Floyd Baker and James Glover, and the County Sheriff James Parker, based on a number of incidents in which prisoners were subjected to a ''water torture'' in order to prompt confessions to various crimes.

Throughout the rest of the opinion, these are referred to as ''torture'' and ''torture incidents.''

All one has to have is Lexus or Westlaw and plug in the words ''water torture'' and find this case. How is it possible that the Office of Legal Counsel could not have found this? How is it possible that they could have also missed what the Columbia Law School was able to find—a telegram from Secretary of State Cordell Hull to the Japanese Government objecting to the mistreatment of American prisoners, which included specifically waterboarding and describing the ''brutal and bestial methods of extorting alleged confessions''? That is our Secretary of State in an official communication to the Japanese Government describing, among other tortures, water tortures as brutal and bestial methods to extort alleged confessions. How could they not have found that? How could they not have found the charges the Senator from North Dakota referred to in which Japanese soldiers were brought up on charges in front of military tribunals—military tribunals staffed with American judges, military tribunals staffed with American prosecutors—for waterboarding American prisoners?

Here are some examples. One of the Japanese officers was named Hata and the article describes the charges and specifications against Officer Hata, which included this:

> . . . Hata did, willfully and unlawfully, brutally mistreat and torture Morris O. Killough, an American Prisoner of War, by beating and kicking him, by fastening him on a stretcher and pouring water up his nostrils.
>
> Similarly, Hata did willfully and unlawfully, brutally mistreat and torture Thomas B. Armitage, William O. Cash and Monroe Dave Woodall, American Prisoners of War, by beating and kicking them, by forcing water into their mouths and noses. . . .

The charge and specifications against Officer Asano were:

> Asano did, willfully and unlawfully, brutally mistreat and torture Morris O. Killough, an American Prisoner of War, by beating and kicking him, by fastening him on a stretcher and pouring water up his nostrils. . . .
>
> Asano did, willfully and unlawfully, brutally mistreat and torture Thomas B. Armitage, William O Cash and Munroe Dave Woodall, American Prisoners of War, by beating and kicking them, by forcing water into their mouths and noses. . . .

The charge and specifications against Officer Kita were again, ''willfully and unlawfully, brutally mistreat and torture John Henry Burton, an American Prisoner of War, by beating him and by forcing water into his nose.''

Over and over the testimony describes exactly what we know as waterboarding. The charges and specifications by this tribunal staffed by American officers describe that they did willfully and unlawfully commit cruel, inhuman, and brutal acts and atrocities and other offenses, including strapping them to a stretcher and pouring water down their nostrils, by holding the prisoner's head back and forcing him to swallow a bucketful of sea water over and over and over.

How could they have missed it? How could they have missed it? How could they miss the decision on point by the U.S. Court of Appeals for the Fifth Circuit?

What else do we know about the Office of Legal Counsel? We know that the conditions there were pretty ripe for abuse. We know they were doing this in secret, protected from public scrutiny, protected from peer review, protected from critical analysis under the veil of secrecy, deep secrecy in which they were operating, coming up with the theories as they pleased, thinking they would never see the light of day. So they did not have to do their homework. Somebody might have done a little research and found the Fifth Circuit decision on point, but, no, they did not need to.

It is part of a pattern because, as the Presiding Officer will recall, when I was offered the chance to read the secret Office of Legal Counsel opinions related to the warrantless wiretapping program, I went and took some notes, and when I got back here, I eventually was able to get them declassified. They described other interesting theories that grew in that hothouse of legal ideology, protected from the glare of public scrutiny, ideas such as the President is not obliged to follow Executive orders. He is not obliged to give anybody notice that he is violating Executive orders. He can live in a parallel universe in constant violation of his own Executive orders and nothing is wrong with that, other than, of course, the fact that it completely degrades and destroys the entire structure of Executive orders as a law function of the United States of America.

Another argument is that under article II, the President's power as Commander in Chief, he has the authority to determine what his powers are. Think about that for a moment. They assert article II gives them the authority to decide what the scope of his article II powers are. I seem to remember a decision called Marbury v. Madison saying it is ''emphatically the province of the judicial department to decide what the law is.''

The last one, my personal favorite, is that the Department of Justice is bound by the legal determinations of the President. It is a good thing that was not the case when President Nixon was the President and made the legal determination if the President does it, it doesn't violate the law.

So what on Earth has been going on at the Office of Legal Counsel, an office that used to be distinguished for its probity, for its analysis, for its scholarship, an office on which the Department of Justice relies?

Just as Americans rely on the Department of Justice to provide guidance in our Government, to provide a moral compass within the Department of Justice, the Office of Legal Counsel is supposed to be the place where they try to get it right. How could they try to get it right when they cannot even find a Fifth Circuit Court of Appeals decision on water torture when you are looking up whether it is illegal? If I were a partner in a law firm and a junior associate came to me with a memo such as this that had missed the case on point, do you think he would have much of a career? I don't think so. It is a fatal failure of legal analysis. And yet, where there is supposed to be the very best at the legal counsel of the Department of Justice, they missed all of it. If there has been a systematic breakdown in this institution of Government long known for probity and scholarship, if it has been captured and behind a veil of secrecy rendered a political ideological tool, that is a matter of very legitimate public concern.

I am pleased to say Senator DURBIN and myself have written to the inspector general of the Department of Justice and to the Office of Professional

Responsibility of the Department of Justice to look into exactly that matter.

I thank the Presiding Officer for his patience with me. I thank the distinguished Senator from Florida for his patience.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, we have heard one of the best—I cannot use ''oration'' because it was far superior. It was one of the best explanations of how the Department of Justice has gone awry by the Senator from Rhode Island. I commend the Senator from Rhode Island. I thank him for his legal analysis, and I wish to underscore what he has said, that the reason the Department of Justice was ignoring that Court of Appeals decision, the reason the Department of Justice was ignoring all of the history of the record that has been built over time, of which the Senator cited the statements from World War II, the reason all of that has been ignored or purposely missed is because the Department of Justice became politicized so that politics became the rule of the day instead of the rule of law.

In a nation that recognizes it is a nation of law, not a rule of men, when politics is inserted for law, then we get into the trouble we have gotten into. That is what brings us here.

I have already addressed this subject of why my conclusion, a long deliberative process of coming to the question, that we ought to etch into law the Army Field Manual as the standard by which the intelligence community will carry out their interrogations. That ought to be the law.

I thank the Senators who have spoken in favor of this legislation. We are going to have a chance to vote on it pretty soon. Each of us can determine what we think ought to be representative of America, if it ought to be torture or not. We are clearly going to have an opportunity to say that because we are going to vote on a proposed law that says: Is torture going to be the standard for America?

I wish to speak on another subject, so I guess the appropriate parliamentary procedure is for me to ask consent to speak as in morning business.

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

RAPE AND SEXUAL ASSAULT INVESTIGATIONS

Mr. NELSON of Florida. Mr. President, thus far, the Department of the Army has acknowledged that there have been 124 incidents of sexual assault against contractor and military personnel in Iraq which are currently under investigation. We know of only three of those cases that are now being considered by the Department of Justice and, therefore, the Department of Justice will not respond to my entreaties about this investigation because they say it is an ongoing criminal investigation.

However, in other cases, we have gathered some facts, and these facts have been quite telling. There does not seem to be a standard to protect female contractors or military personnel from sexual assault in Iraq under the jurisdiction of the U.S. Army. The 124 cases of sexual assaults of both contractors and military personnel have been acknowledged just under the Department of the Army. The question is, under the other branches of the service whose contracts are being administered by civilian contractors, how many are there; and are there similar cases in the other theater of operations—Afghanistan as well as in Iraq?

What we also know from the facts we have gathered thus far is the problem is not within the U.S. military nearly so much as it is among contractor personnel because there is a nebulous set of regulations as to how it is to be handled on the reporting of a rape. Untold numbers of sexual assaults have been committed in Iraq, and the Departments of Justice, Defense, and State are providing very little information on whether they have been prosecuted. It is time we have this information.

Last December, I wrote to the Secretary of Defense asking him to launch an investigation by DOD's inspector general into the rape and sexual assault cases in both Iraq and Afghanistan. I sent similar letters to the Secretary of State regarding the investigations carried out under the Bureau of Diplomatic Security, and I requested that the Attorney General update me on the status of the related criminal investigations. I asked whether and why evidence in the sexual assault cases was turned over to the private firms.

I got into this when one of my constituents in Tampa, FL, came forth and told about the assault case. This had followed a Texas case that had been elevated to the public sphere. Apparently, one of these women was assaulted, then went to see the doctor, and a rape kit was prepared by the military doctors. That kit would have the evidence of the rape, and it was turned over to the civilian contractor. Suddenly, the rape kit disappeared.

So the question is, what steps has the Department of Defense taken to ensure the full investigation and prosecution of these cases?

In the meantime, the Department of State has told our office that diplomatic security has investigated four cases. One of them was the Texas lady, and that was where a contractor personnel assaulted another contractor personnel. Another involved a State Department employee who allegedly assaulted a woman employed by a contractor—in this case KBR. Then another case involved two State Department employees. According to the State Department, three of the cases were referred to the Department of Justice for investigation and possible prosecution.

Recently, our Senate staff met with representatives of the Department of Defense IG's office, and we asked them to brief us because of the response received from the Department of Defense, which certainly did not answer my questions. The inspector general's office stated that, and this is what blew our mind, the Army Criminal Investigation Command has investigated 124 cases of sexual assault. Now, that is just the Army, and that is just in Iraq. And that is just in the 3 years of 2005, 2006, and 2007. So what about the other services and what about Afghanistan?

So this naturally leads me to question whether there could be hundreds of additional investigations going on about contractor personnel—specifically in the ones that have come to us, it was the contractor KBR—and it suggests that perhaps there could be many assaults that have not been investigated at all. And because the inspector general's office would not provide information on the disposition of these investigations, it certainly is unclear whether there has been any prosecution of these within the military or the criminal justice systems, or whether it has been dealt with administratively.

Now, one of my Florida constituents was, and I will use the word advisedly, allegedly sexually battered in Iraq in 2005. And although the Naval Criminal Investigative Service was supposed to be investigating her case, they will not even say anything about the basic matters of the case because, the Navy says:

> Law enforcement records are exempt from disclosure at the time requested if it can be reasonably expected to interfere with the enforcement proceedings.

I think we in this Congress, we in the Senate, and those of us on the Senate Armed Services Committee and the Senate Foreign Relations Committee, certainly have an obligation to investigate. Because cases such as this can languish far too long without any information from the Government coming forth in order to protect these individuals.

So I have asked that our office follow up with the Defense Department, with the following detailed questions: The actual numbers of the sexual assault cases reported since 2001 in Afghanistan and since 2003 in Iraq and the disposition of each case. I have asked to have the information of the service components or the Government agencies involved in each resulting investigation. I have asked for the status of the persons involved in each case—in other words, I want to know whether they are Active military, U.S. Government civilian employees, contractor employees or are they an Iraqi or Afghani national.

I have asked for an explanation of the U.S. jurisdiction or the investigative authority for sexual assault allegations in both those areas in which we are engaged—Iraq and Afghanistan. And I have asked for a clear explanation of the rules, regulations, policies, and processes under which sexual assaults are investigated, evidence is obtained, and responsible individuals are held accountable. I have also asked

for a clear explanation of how the Department of Defense divides authority among all its various investigative arms in these sexual assault cases.

I have had to ask these questions because DOD and the Department of State have not been forthcoming. Yet what is being told by some of these assault victims is absolutely horrifying. For example: One female contractor employee, during cocktail conversation, suddenly, totally, passed out. Apparently, her drink had been spiked. She awoke to find out she had been assaulted many times. Upon seeing a military doctor, in fact, that was confirmed and the rape kit was prepared. But when the rape kit was turned over to the contractor, it amazingly disappeared. The evidence disappeared. That contract employee then, upon asking questions, was locked in a container and could not get out of the container to go and tell her story to other personnel of her contractor, and she only got out because she was able to persuade someone to let her use a cell phone to call her father back in the United States. That is how she got out of her confinement.

Now, if all of that is true, there is simply no excuse for this. But what we need to determine is the truth. It is a shame that the senior Senator from Florida has to come to the floor of the Senate to elevate this issue in order to say to the Department of Defense and the Department of State that we want the answers to our questions.

I have asked the questions. I expect, on behalf of the Congress of the United States, that we will get the answers.

I yield the floor.

Mr. President, I ask unanimous consent that the time during the quorum be equally divided between the two sides.

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

Mr. NELSON of Florida. 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.

Mrs. FEINSTEIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to speak for up to 5 minutes.

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

Mrs. FEINSTEIN. I spoke earlier this morning, so I will be brief.

It would appear that the Senate is poised to pass a measure that would end the debate over torture in our Nation. It would require the CIA to follow the Army Field Manual when it comes to interrogations of detainees, and it would create a uniform standard for interrogation across the Government. It would prohibit waterboarding and certain other coercive interrogation techniques. I deeply believe it will go a long way toward restoring our Nation's credibility.

I have spoken with experts on interrogation, numerous retired three and four star generals, and human rights leaders. From our discussions, I am absolutely convinced that we must have a uniform standard for interrogation of detainees across the Government. That is what putting the CIA under the Army Field Manual would do.

This debate is about values. We are a nation of values, and we believe in the rule of law. It is fair to say that America has been diminished around the world. Our standing is at an all-time low, not only among our allies but also our enemies. This comes from Abu Ghraib. It comes from Guantanamo. It comes from renditions, and it comes from black sites. It comes from waterboarding, a technique used during the Spanish Inquisition to get religious dissenters to publicly disavow their beliefs.

Let me give one example of why a clear, single standard for all detainee interrogation is needed.

Until a couple of weeks ago, the executive branch refused to admit that it had waterboarded anyone.

Then last week, at a public hearing, General Hayden stated that the CIA has waterboarded three detainees: Abu Zubaydah, Abd al-Rahim al-Nashiri, and Khalid Sheikh Mohammed. General Hayden said this was done in the past and would not be used in the future.

In fact, General Hayden said that waterboarding itself was no longer necessary. These were two major revelations. The U.S. Government had, in fact, authorized waterboarding, and we weren't going to do it again.

The very next day, a White House spokesman, Tony Fratto, said the President could reauthorize the use of waterboarding at any time. At this point, we had returned to a state of confusion. The CIA was saying waterboarding was not authorized and not needed. The White House was saying waterboarding was still on the table.

That was not the end. The very next day, General Hayden testified in open session again, this time in front of the House Intelligence Committee. Here is what he said:

> In my own view, the view of my lawyers and the Department of Justice, it is not certain that that technique—

Meaning waterboarding—

> would be considered lawful under current statute. . . .

So here you have a mix of views. Here you have unclear American policy.

The bill which we have before us today clears up that confusion, and it states once and for all what the U.S. Government would do; that there would be 19 specific approaches documented over many pages for each approach in this volume, and 8 specific techniques that are banned, one of which is waterboarding.

So we have the opportunity today to take a stand—to clear the air and to say that the U.S. Government follows uniform specific standards for interrogation of detainees as put forward by the Army Field Manual.

I would like to quote a statement the President of the United States—President Bush—made on June 22, 2004. Here is his quote:

> We do not condone torture. I have never ordered torture. I will never order torture. The values of this country are such that torture is not a part of our soul and our being.

President Bush, if you stand by these words, you will sign this intelligence authorization bill.

Thank you, Mr. President. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, how much time do I have left out of the 5 minutes?

The PRESIDING OFFICER. A minute and a half.

Mrs. FEINSTEIN. Mr. President, if I may, I very much would like to thank a few people who have been very helpful in this whole thing. The first is David Grannis, my intelligence liaison, who has been with me all the way. I thank the Partnership for a Secure America and the 18 former national security officials who wrote in support of the Army Field Manual.

I thank Senators HAGEL and SNOWE for taking a stand for what is right for America in the Intelligence Committee. I thank our chairman, Senator ROCKEFELLER, for being willing to risk the passage of this legislation by supporting this very important amendment.

I also thank Senator WHITEHOUSE. He offered this amendment when it was in the Senate Intelligence Committee. I thank him for his tireless efforts in support of this conference report. I have seen him on the Senate floor at least twice today. He was a cosponsor of the amendment I offered in the conference, and I know his staff has been very effective in working on this amendment.

I thank Senator TOM CARPER of Delaware who has done a lot of work on this issue on the telephone.

I thank my colleague and friend, Senator RON WYDEN, who came earlier to the floor to speak on this issue.

So there have been many people working toward this vote, and it looks as if it may just happen. I would like them to know that we are very grateful for their support.

Oh, one more: Senator FEINGOLD. Senator FEINGOLD was a cosponsor

when I offered the amendment in the Intelligence Committee. I very much thank him for his steadfastness.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Republican whip.

Mr. KYL. Mr. President, we are going to be voting in about an hour or so on the conference report on the Intelligence Authorization Act. I would like to explain briefly the reasons I think we should vote against that reauthorization.

There are two primary reasons. First has to do with the additional provision that was passed neither by the House nor by the Senate but was dropped into the conference report without Republican involvement; that is, the provision that Senator FEINSTEIN authored that would substitute for the authority that agencies of the United States currently have—agencies such as the Central Intelligence Agency—to interrogate foreign terrorists. It would substitute for the current rules under which they operate the U.S. Army Field Manual.

The U.S. Army Field Manual is a document that is prepared for use for all of our military Armed Forces, to provide rules of the road for them in interrogating enemy prisoners of war. So when they capture someone on the battlefield, in order to ensure that the Geneva Conventions are adhered to, there is a set of guidelines set out in the Army Field Manual that very explicitly explain to our soldiers exactly how they need to treat these prisoners and what kind of interrogation in which they can engage.

A couple of years ago, when the Congress and the administration got together and revised our procedures and the statute dealing with this subject, the explicit decision was made to not have the Army Field Manual govern the interrogations by other Government agencies. That was a wise decision then, and it is a wise decision now.

There are reasons the U.S. Army would want to have a set of rules for soldiers capturing enemies on the battlefield. But there is quite a different situation presented when you have captured a terrorist and you want to interrogate that terrorist and you have at your disposal Central Intelligence Agency trained personnel or other special personnel who are trained in interrogation techniques that comply with the Geneva Conventions accords, are not torture, are authorized by law, but may be outside the particular scope of the Army Field Manual.

This is a gross oversimplification, but for people to generally appreciate what I am talking about, you have all seen movies where a prisoner of war is captured, and they say: Give me your name, rank, and serial number, and that is pretty much all an enemy soldier is required to provide. You cannot torture them to get them to tell you anything beyond those three pieces of information, and that is as it should be.

Interestingly, our terrorist adversaries know well the Army Field Manual, and if they are captured as enemy POWs on the battle ground by U.S. Army personnel, they know precisely what kind of interrogation to expect. In fact, we know they are trained on how to resist the interrogation techniques and not provide information. It would be a horrible mistake for us to assume that the techniques that are appropriate for Army battlefield capture interrogation should apply as well to situations in which a CIA person is interrogating a terrorist—someone who is not fighting for another country in a uniform captured on the battlefield.

That is the essence of the Feinstein proposal, and it is one of the reasons the President has made it very clear that were this conference report to pass, he will veto the bill; indeed, he should.

There are other reasons for the President's decision to veto the bill as well. Let me just mention a couple of them. One of the things that relates to this interrogation matter is a requirement in the bill that a report to Congress must be made of the identity of each and every official who has determined that any interrogation method complies with specific Federal statutes, why the official reached the conclusion, and the related legal advice of the Department of Justice.

This may seem benign on the surface but, I submit, is in the nature of harassment of officials who are trying to make decisions about the application of law. They come to judgments. They advise the people who are asking for the advice, and then action is taken on that basis. If Congress needs a report every time a Government official makes a decision, clearly that agency cannot function.

Secondly, there are too many opportunities for second guessing, too much of an incentive for the people who are doing the work we ask them to do to not make any decisions, not engage in that work because they might make a mistake. This is exactly the kind of ethos we do not want in our intelligence community.

Another requirement of the bill is the creation of another inspector general. We already have inspectors general for each of the elements of the intelligence community, but there would be a new one under the DNI. But his primary responsibility would be to report to Congress rather than the DNI.

There are other requirements for reports that have already occupied far too much attention of our intelligence community. There are requirements for congressional confirmation of several new positions, positions that currently do not require congressional confirmation because they are not political offices. It is the head of the NRO, for example, the head of NSA. These are agencies that have been peopled with professionals, people who do not have anything to do with politics. They should not have to come to the Senate and get grilled by Senators—more importantly, Senators who then might hold them up.

You have heard about the holds Senators place on nominees. I do not know how many executive nominees and judges we have waiting confirmation by the Senate right now, but there are a lot. What happens is, because Senator X does not like the administration's position on something, they decide to put a hold on an important executive branch nominee. As a result, too many positions are vacant today because of unrelated holds by Senators. It just presents the Senate with an additional way to hold up action on people, in effect, to blackmail an administration into doing what it wants.

There are a variety of other problems the President has pointed to in this legislation that will require the President to veto it. But I want to conclude by simply saying that a great deal of credit goes to Senators ROCKEFELLER and BOND for their work in trying to create an authorization bill for the intelligence community against great odds. There is a lot of disagreement among people on the Intelligence Committee itself, as well as others in this body, about what ought to be done, and they came to, in effect, an agreement that except for the Feinstein proposal—that, as I said, was added in the conference; it was not passed by either the Senate or the House—they came to an agreement on a bill that Senator BOND has described as pretty effective.

Hopefully, with the President now indicating he will veto the legislation over the provisions I have identified, and some others, the other side will recognize it is important to fix those problems, clean it up, get a bill back to the President he can sign, and we can move forward.

FISA

Now, the last thing, Mr. President, I want to do is change the subject very slightly because we just had a conversation with the President, who reiterated his deep concern about the apparent unwillingness of the House of Representatives to reauthorize the Foreign Intelligence Surveillance Act so that we can engage in intelligence collection against this country's worst enemies: al-Qaida and other terrorists.

This body, with a vote of 68 to 29—a very bipartisan vote—agreed on a Foreign Intelligence Surveillance Act reauthorization for a period of 6 years. The key feature of it—different from the current law—is retroactive immunity for those telecommunications companies that might have assisted the United States in gathering this intelligence. That was following the Intelligence Committee's work—again, great work; 13 to 2 was the vote in the Intelligence Committee, bipartisan—supporting that legislation. It has now been sent to the House of Representatives. All the House of Representatives needs to do is to take this bill, which has bipartisan support in the Senate, pass it, and send it to the President for his signature.

The President's point, just a few moments ago, to us was it would be an abdication of responsibility for the Congress not to accomplish this result before it leaves on a recess on Friday.

This intelligence collection is critical to the security of the United States. The point of the most recent legislation is to provide retroactive liability protection for those companies that have aided the United States pursuant to its request.

In effect, what happened was the President and the Attorney General requested various telecommunications companies to help us collect electronic information on people we have targeted as necessary for collection purposes. They did not have to do it. They volunteered to help us. They understood the threat to the United States and, like any good citizen would do when called upon by the Commander in Chief, they agreed to assist. Now, some of them have been sued. They are, of course, accountable to their boards of directors who have a responsibility under Federal law to protect shareholder interests.

What some of these companies are finding is an increasing difficulty of assisting the United States and continuing to stay in business. They have their own business responsibilities. They have to engage in activities both in this country and in other countries sometimes. They have to get customers. They have to make business agreements with other parties. When too many other folks say: We don't want to do business with you because of the potential that you are going to be sued or that you have been sued, and then there is the question of whether we are going to be drawn into all that, then it makes it impossible for those companies to assist the United States.

The point is this: There is an increasing concern that some of these companies are not going to be able to provide this assistance to us if we don't solve this retroactive immunity issue. Some people have said: Well, we will simply temporarily extend the existing law. The reason that doesn't solve the problem is because the existing law doesn't provide that retroactive immunity. That is the point of this legislation, and if this legislation doesn't provide that retroactive immunity pretty soon, there could well come a point in time when we don't have any telecommunications companies left doing this work for us to matter.

Mr. WARNER. Mr. President, will the Senator yield?

Mr. KYL. I am delighted to yield to the Senator from Virginia.

Mr. WARNER. Mr. President, I am delighted the Senator from Arizona brought this up because I have participated in a number of debates with our distinguished colleague from Missouri. What we always have to remind our colleagues of, as well as the American public, is that these companies have volunteered. They are not in this for a profit motive. There is some compensation for expenses. They are not unlike the men and women of the Armed Forces, all of whom today are in uniform because they raised their right arm and volunteered. We cannot ask these companies to subject themselves to the uncertainty and the threats associated with legal processes. We are going to lose a very important component of what I call the American spirit: voluntarism. Whether it is in the corporate world, whether it is in the Armed Forces or any other number of activities, we are a Nation known for people who step forward and volunteer.

This is a clear example of how these companies cannot continue under the situation that persists today, because the directors of those companies, their corporate boards, have an obligation to their stockholders. It is a stretch to say to the stockholders, who are part of the voluntarism they are doing to serve the cause of freedom in the United States, that they should be subjected to a lot of court suits.

So I appreciate the Senator bringing this up. It is important. We have to remind our colleagues about it. I am proud of what this Chamber did. They voted it through, very clearly.

Mr. KYL. Madam President, if I could say to the Senator from Virginia, I hadn't thought of putting it quite the way he did. He is, exactly right. We have thousands of young men and women who volunteer to serve their country. What would we think if part of that service means getting sued by somebody? Wouldn't we provide them protection from those kinds of lawsuits? Obviously, we would. The companies that serve us every day when we pick up the phone to make a phone call—we want them to be there to help us—they step forward when the President asks them to volunteer to serve their country, at no profit, as the Senator makes clear, and then they get sued and we are not willing to provide protection to them.

Mr. WARNER. Madam President, I couldn't agree more. Furthermore, the service they are doing by virtue of this voluntarism directly contributes to the safety and the welfare of the men and women in the Armed Forces who are engaged in harm's way beyond our shores.

Mr. KYL. Madam President, that is another very good point.

Mr. WARNER. At this point, we have about run out of time, and I wish to say a few words about the pending matter.

Mr. KYL. Let me conclude these remarks then. The key point I am trying to make is we have related activities. We have the Intelligence Authorization bill on the floor, but we also have a couple of days before this recess to see that the great work the Senate did is adopted by the House of Representatives so the President can sign it.

Having just come from the White House, the President asked us to please convey his sense of concern for the people of this country, for the security of those soldiers whom we sent to do a mission, if we can't get good intelligence on this terrorist enemy, and the only way—the best way we can do that is through the interception of these communications. It cannot be done if there are no telecommunications companies willing to assist us. There could well come a point in time when, because we haven't done our job of providing them liability protection, there is nobody there to provide the help to us.

So I thank the Senator from Virginia, and again I get back to my original point, which was I hope that in a few moments, knowing the President is going to veto this piece of legislation, we will support his position and vote no on the authorization conference report.

I yield the floor.

The PRESIDING OFFICER (Ms. KLOBUCHAR). The Senator from Virginia has 23 minutes remaining.

Mr. WARNER. Fine. That is under the control of the distinguished Senator from Missouri, and I will ask for such time as I may need at this point.

I have always considered myself, here in the Senate, to be most fortunate for the various assignments I have had through this being my 30th year. There have been periods when I have served on the Intelligence Committee. I was once the ranking member of the Intelligence Committee. Then, fortunately, I was selected to go back on the Intelligence Committee several years ago. It has been a part of my overall service to the Senate, and indeed to the Nation, to be on that committee.

I was at first introduced to the world of intelligence in 1969 when I was fortunate enough to go to the U.S. Department of Defense at the Pentagon and serve the Navy, first as Under Secretary and then Secretary. So I have actively been involved in the work of the intelligence community for some many years.

I am greatly concerned that we have before us today a piece of legislation which, even though a member of the committee and even though I worked with my colleagues to frame this legislation, I will have to vote against because of the actions that took place in the conference committee where an out-of-scope provision was put in—for the best of intentions, I am sure, but it wasn't carefully thought through, in my judgment, because this provision would say that henceforth, the CIA and the Federal Bureau of Investigation would have to conduct their interrogation procedures in accordance with the Army Field Manual.

I was privileged again to be one of a group of a small number of Senators who, in the year 2005, worked on the Detainee Act and then subsequently, in 2006, worked on other legislation to try to delineate carefully the responsibilities of various agencies and departments of our Government as it related to the all-important collection of our intelligence and a part of that collection procedure being the interrogation

of detainees. Now, we decided, after a lot of careful deliberation of the 2005 act, that we would restrict that to the men and women in the Armed Forces.

There was a very good reason for that. In the course of our conflicts in Iraq and Afghanistan, detainees came into the possession of our field forces, operating in combat conditions most of the times when these detainees were caught, and relatively, so to speak, while the military people are magnificently trained throughout their careers to deal with these situations of combat and the like, very few of them have had the opportunity to get into the profession of interrogation. In order to give them the protection they needed in performing interrogation at what we call the field and tactical level, it was important to draw up this act and to prescribe very clearly for the men and women in uniform—I repeat that: only for the men and women in uniform—very clearly the procedures they must follow to accord the values of our framework of laws, the fact that this is not a nation that stands for torture, and to also give them protection in the event that somehow they were challenged in a court of law, be it a military court or other courts, as to their performance by virtue of their interrogating activities of certain detainees. So there were many reasons to put it all down and say that this is the Army Field Manual, prescribe the authorized techniques, and therefore allow the men and women of the Armed Forces to continue their operations militarily, tactically, and to follow that field manual in such instances where it is necessary to interrogate detainees.

But in the course of that debate—and understandably and I think quite properly—attention was given to whether we should have this type of procedure applicable to all the Government agencies and departments of our Federal Government. The decision was made, and the answer was no—not quickly, no; it was a deliberate no reached after a lot of careful consideration—that this Detainee Act should be for the purpose of our military people, and we purposely did not include the CIA and the FBI. As time evolved into 2006, when we had that legislation, once again we reiterated we would not include either the CIA or the DIA and then in any way at that time legislate their program, other than to say that the conduct of the CIA program and the FBI program has to be in total compliance with all the laws of our land, which in no way sanctioned abusive treatment, torture or those sorts of things. It is not a part of it.

Furthermore, that both the procedures by the CIA and the FBI had to be in compliance with the treaties, the treaty obligations we have, particularly article 3, common article 3, which has been debated so carefully on the floor of the Senate.

So, in effect, what we have before us momentarily in this vote is overruling the decisions that were made by this body in the context of drawing up those two statutes, one in 2005 and one in 2006. So I, for that reason, feel very strongly that I cannot support this. I think it has been indicated that the President doesn't support it and that if this were to arrive at his desk, in all probability, we would have a veto, and that would be regrettable because a lot of work has been put into this bill. There are portions of it that the distinguished Senator from Arizona, Mr. KYL, talked about which hopefully can be corrected. But we need an Intelligence bill. We have marvelous staff in the Senate and others who work on this problem of legislation year after year, and we are long overdue to have an Intelligence bill. It is unfortunate that in the last throes of the legislative process, in a conference, this provision, which we clearly know to be out of scope, was put into the bill, and it is for that reason that I will have to oppose the bill.

There is another reason I would have to oppose it, and that is that the Army Field Manual, again, was for the military, but it is a manual. Certainly, under the current way it is framed and put together in the law, a manual can be changed. So while there are some 19 techniques that are detailed as approved for the use of our troops in the field and elsewhere, who is to say they couldn't add some more and that at that point Congress is not involved. So I am not sure people thought through the technical aspects of this thing, and to me, it is a very unwise decision.

But I wish to reiterate to our colleagues that by virtue of taking the stance I take—and I presume a goodly number of individuals will join in this, unfortunately, and vote against this bill—this is not to say, in any way, that we are sanctioning that the Agency, the CIA, employ techniques which are in any way constituted as abusive treatment of human beings or torture or degrading.

All of that is carefully spelled out in the framework of the laws of 2005 and 2006, and it cannot be done by the agency, nor the FBI—nor are they doing it. The Intelligence Committee has had a series of hearings. We have had the DNI, the Director of the CIA, the head of the FBI, and all of them have been carefully questioned and are on record saying that these procedures, which would be tantamount and antithetical to our laws of 2005 and 2006 are not employed now, and they will not be in the future.

It is for that reason that I will have to oppose this bill. I urge my colleagues to do likewise because we will be taking away from the agencies the ability to perform a very limited number of interrogations, a very limited number—but they do them in an entirely different framework of circumstances, environment, than does the Army or other military members of our Army, Navy, Air Force, and Marine Corps under the Army Field Manual.

The techniques applied by the CIA are in compliance with the laws, but they are not all written up so that a detainee knows full well that if they are apprehended, they will be subjected to the interrogation procedures of the agencies; he would know all about it if it is written up as it is in the Army Field Manual. That would take away a good deal of the psychological impact of highly skilled interrogating procedures. We are about to throw those away, abandon them.

This is a very dangerous and complex world. I sometimes think, in the course of this political campaign, as I listen to my good friends—three of them Members of this Chamber—vying for the Presidency of the United States, the awesome framework of complex situations that is going to face the next President of the United States. I must say, I have a few years behind me, and I have seen a good bit of history in this country, but never before has the next President, whoever it may be—never before have they faced such an awesome, complex situation in the world that is so fraught with hatred and terrorism and threats to the basic freedoms of our Nation and many other nations.

It is going to be a real challenge for that next President to shoulder the responsibilities of Commander in Chief of the Armed Forces of the United States. And this set of procedures that we presently have in place, which complies with the law of our land, which complies with international treaties, must be left intact to enable the Intelligence Committee to conduct their interrogations and do so to produce facts which could very well save this Nation and facts that are, every day, helping to save the men and women of the Armed Forces in uniform wherever they are in the world—primarily in Iraq and Afghanistan—as they pursue their courageous responsibilities on behalf of us here at home.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Madam President, I believe it is important to clear up for the record, for the benefit of my colleagues and the American people, some statements that were made earlier today about waterboarding, interrogation techniques and the Army Field Manual.

During the House and Senate conference for the fiscal year 2008 intelligence authorization bill, an amendment—section 327—was adopted that would prevent any element of the intelligence community from using any interrogation technique not authorized by the Army Field Manual.

Earlier today, we heard that the full membership of the conference committee, the full membership of the House Intelligence Committee and Senate Intelligence Committee all came to the conclusion that all interrogations should be conducted within the terms of the U.S. Army Field Manual.

Let's be clear: this particular amendment only passed by a one-vote margin. The conference was sharply divided on this issue, as reflected by the fact that no House Republicans signed the conference report and only two Senate Republicans signed the report.

The problem with this provision is not that it says that interrogators cannot use certain techniques. Most of the techniques prohibited by the field manual are so repugnant that I think we can all agree they should never be used.

In fact, this vote is not about torture, and it is not about waterboarding. We all think that torture is repugnant. And whether one believes that waterboarding is torture is really irrelevant because waterboarding is not in the CIA's interrogation program.

The problem is that the provision in the conference report establishes a very limited set of techniques, and these are the only techniques that any interrogator may use.

So the vote is really about whether the FBI and CIA should be restricted to a set of 19 unclassified techniques, designed for the Army, which have not been examined fully by some agencies.

If this legislation passes and is signed into law, all of us need to understand fully that FBI and CIA interrogators may only use the 19 techniques authorized in the field manual. And all of us need to understand that no one can say for sure that this will not impact our future intelligence collection.

As CIA Director Hayden has said: ''I don't know of anyone who has looked at the Army Field Manual who could make the claim that what's contained in there exhausts the universe of lawful interrogation techniques consistent with the Geneva Convention.''

If we are going to demand that all Government agencies must use only these techniques, we must make sure that the field manual does not leave out other moral and legal techniques needed by these agencies. And I don't believe that the Intelligence Committee has adequately pursued this issue.

Having a single interrogation standard does not account for the significant differences in why and how intelligence is collected by the military, CIA, and FBI.

Much has been made of the FBI saying that they do not use coercive techniques. That is accurate. The FBI operates in a different world—where confessions are usually admitted into evidence during a prosecution. This means that they have to satisfy standards of voluntariness that do not bind either the military or the CIA.

But significant concerns have been raised about whether the FBI would even be able to conduct ordinary interrogations using only those techniques authorized by the field manual.

A time-honored technique, one that has led to countless successful prosecutions, is deception—for example, telling a suspect that his associate has confessed even though the associate has refused to cooperate. But, it's unclear where this type of deception is authorized in the field manual. So, under this amendment, the FBI could be barred from using this simple, yet invaluable, technique.

FBI lawyers have told us that they need more time to conduct a full legal review of the field manual and determine along with their counterintelligence and counterterrorism divisions what impact using only the field manual would have on interrogations. We should give them time to do this review before we pass a bill that could severely undermine their interrogation practices.

Aside from these concerns, the Army Field Manual on Interrogation was designed as a training document. It is changeable, which means the Congress—and the CIA and FBI have no idea what techniques may be added—or subtracted—tomorrow, next month, or next year. A moving document is not a sound basis for good legislation.

There are also practical consequences to applying this unclassified military training manual to civilian agencies; as we heard earlier, having one standard that can be publicly judged by the entire world. We are talking about intelligence interrogations. We should not broadcast to the world, to our enemies, exactly what techniques our intelligence professionals may use when seeking information from terrorists.

The wide availability of the field manual on the internet makes it almost certain that al-Qaida is training its operatives to resist the authorized techniques.

Supporters of this provision also argue that the Army Field Manual gives interrogators sufficient flexibility to shape the interrogation. Yet, some of the techniques in the field manual are allowed only if the interrogator obtains permission from ''the first O–6 in the interrogator's chain of command.'' What that means is that an interrogator has to get permission from an Army or Marine Corps colonel or a Navy captain before proceeding. So in order to have any flexibility, will the CIA and FBI have to bring colonels and captains to all of their interrogations? These interrogations will get awfully crowded pretty quickly.

We have been told that the field manual incorporates the Golden rule. Do unto others as you would have them do to unto you is an admirable standard. But when dealing with terrorists who have shown no regard for morality, humanity, and decency, it is somewhat out of place.

Do we really expect that if we restrict ourselves to techniques in the Field Manual that al-Qaida will do the same? While we are arguing about whether waterboarding is torture, they are chopping off heads and using women and children to conduct their suicide bombings. Now, I am not suggesting that we resort to their barbaric tactics. I am simply saying that we should not base this important decision that will bind all of our intelligence interrogations on the hope that al-Qaida will discover civility.

Let me also clarify a comment from our distinguished committee chairman about the interrogation of Ibn Shaykh al-Libi. It was suggested that al-Libi lied to interrogators because of the CIA's ''coercive'' techniques. However, al-Libi was not in CIA custody—or foreign custody for that matter—when he made claims about Iraq training al-Qaida members in poisons and gases.

In fact, it was only when al-Libi was interviewed by CIA officers that he recanted his earlier statements.

I believe we still have a lot of work to do before we impose restrictions on CIA and FBI interrogations that could have severe consequences for our intelligence collection.

Now, I want to make clear what my position is here today. For the past several months, I have worked hard to put together a reasonable bill that allows the Intelligence Committees to conduct necessary oversight, while cognizant of the administration's concerns about resources and executive branch prerogatives.

I understand that no administration likes oversight. But oversight is essential to what Congress does: We have an obligation to the taxpayers to make laws and appropriate funds responsibly. And in order to do this, we have to know how the money is being spent and what activities are being conducted.

I have reviewed closely the Statement of Administration Policy on this bill and I am confident that we have addressed or resolved all but one of the concerns listed there. One provision remains that merits a veto and that is the amendment before us: the Army Field Manual interrogation techniques.

At the end of the day, if this provision is removed, I will support this bill. But in its current form, I cannot support it and I urge my colleagues to vote against the conference report.

Mr. President, I thank the distinguished Senator from Virginia, who has played the lead in so many things, such as the Detainee Treatment Act and other major pieces of legislation, for his very thoughtful discussion of these issues.

It has been very troubling to me to hear on the floor today some things about what the CIA does that are absolutely not true. We have heard all kinds of descriptions of techniques that are barred by the Army Field Manual. The techniques barred by the Army Field Manual, the horrors that were outlined, are not tactics the CIA uses. They do not use them. They would probably violate the Geneva Conventions and many other laws, which absolutely do cover interrogations by the CIA. When one raises the spectrum that the CIA may be torturing detainees, No. 1, it is not true; No. 2, for those who know what is going on, it is irresponsible; No. 3, it is the kind of thing

that fuels the media of our enemies. I would not be surprised to see some of these comments reported in Al-Jazeera.

What happened at Abu Ghraib was tragic. There were criminal acts by American troops. We punished them, but nobody talks about the fact that we punished them and sent them to prison. They went to the brig, as they should. Now we have heard discussions attributing to the CIA all manner of activities that are wrong, improper, not usable, and are not used.

I think it is important we clear the record. I wish some of the people who know better would say I didn't mean to say that the CIA does these things, because the people on the Intelligence Committee know precisely what is done and what is not done.

Mr. WARNER. Will the Senator yield for a moment?

Mr. BOND. I am happy to.

Mr. WARNER. As a Senator from Virginia, I am proud to have the CIA principal office in my State. I have been working with them for 30-some-odd years. I have gotten to know many of them through the years. They are not people who would set out to violate the laws of our Nation. They are just like you and me. They have families and the same values we share in the Senate and in our neighborhoods. They do go abroad and assume an awful lot of personal risk on a number of missions. But in terms of following the laws of our Nation, and the international laws, I think they stand head and shoulders, and they are to be commended.

Mr. BOND. Madam President, I thank my distinguished colleague from Virginia. He is one of the real experts in this body on military and intelligence affairs. I can tell you that having talked with General Hayden and the other top officers of the Agency, getting to know Attorney General Mike Mukasey and those other responsible, high-principled officials who are overseeing it, it is not a danger that we are going to see torture or inhumane or degrading treatment used.

Now, again, during the House-Senate conference for the fiscal year 2008 Intelligence authorization bill, an amendment—section 327—was adopted that would prevent any element of the intelligence community from using an interrogation technique not authorized by the Army Field Manual.

Earlier today, it was stated on the floor that the full membership of the conference committee, the full membership of the House Intelligence Committee, and the Senate Intelligence Committee came to the conclusion that interrogations should be conducted within the terms of the U.S. Army Field Manual.

Let me be particularly clear that this amendment only passed by a one-vote margin. The conference was sharply divided on the issue, as reflected by the fact that no House Republicans signed the conference report and only two Senate Republicans signed the report.

The problem with this provision is not that it says the interrogators cannot use certain techniques. Most of the techniques prohibited by the Army Field Manual are so repugnant that I think we can all agree they should not be and would never be used.

In fact, this vote is not about torture or about waterboarding. Despite what you have heard on the floor, it is not about waterboarding. Torture is repugnant. We have stated that time and time again—in the Detainee Treatment Act and in other laws we passed. Whether one believes it is torture is irrelevant because waterboarding is not in the CIA's interrogation program.

The problem is the provision in the conference report establishes a very limited set of techniques, and these are the only techniques any interrogator may use. So the vote is about whether the FBI and CIA should be restricted to a set of 19 unclassified techniques, designed for the Army, which have not been examined fully by some agencies. I say ''19 unclassified techniques'' because those techniques not only have been published widely, but they are included in al-Qaida training manuals. So the al-Qaida high-value leaders—the people with the information—know precisely what it is all about.

If this legislation passes, and were it to be signed into law—which all of us know it will not—we all need to understand fully that the FBI and CIA interrogators may only use the 19 techniques authorized in the field manual. According to the field manual, they would have to get a clearance from an OC–6, a military officer. That was designed for the military, not for the CIA, not for the FBI. When my distinguished colleague from Virginia passed the Detainee Treatment Act, he and the Senator from Arizona, Senator MCCAIN, expressly left the CIA out of the limitations to the Army Field Manual.

As CIA Director Michael Hayden has said:

> I don't know anyone who has looked at the Army Field Manual who could make the claim that what's contained in there exhausts the universe of lawful interrogation techniques consistent with the Geneva Conventions.

He described a whole area of techniques. There are a whole group of techniques that we use on the volunteers who join our Marines, Special Forces, our SEALs, our pilots, which I described earlier today. Many tactics are far more difficult to withstand than the techniques that are used by the CIA in its interrogation.

If we are going to demand that all Government agencies must use only these techniques, we must make sure the Army Field Manual doesn't leave out other moral and legal techniques needed by these agencies. I don't believe the Intelligence Committee has adequately pursued this issue.

How many of those techniques do we want to publish so our al-Qaida targets will know how to resist them? Having a single interrogation standard does not account for the significant differences in why and how intelligence is collected by the military, CIA and FBI, and from whom it is collected.

Much has been made of the FBI saying they do not use coercive techniques. That is accurate. The FBI operates in a different world—where confessions are usually admitted into evidence during a prosecution. This means they have to satisfy standards of voluntariness that do not bind either the military or CIA. When they question somebody, they are trying to stop a terrorist attack from happening in the future. They are in the field. The FBI is investigating a crime that has been committed in the hopes of punishing those people. There are significant concerns about whether the FBI would even be able to conduct ordinary interrogations using the techniques in the Army Field Manual.

A time-honored technique, one that has led to countless successful prosecutions, is deception—for example, telling a suspect that his associate has confessed even though the associate has refused to cooperate. But as I read the Army Field Manual, I don't see that that is authorized. So under this amendment, the FBI could be barred from using this simple, yet invaluable, technique.

FBI lawyers have told us they need more time to conduct a full legal review of the Army Field Manual to determine, along with their counterintelligence and counterterrorism divisions, what impact using only the field manual would have on interrogations. We should give them time to do this review before we pass a bill that could severely undermine their interrogation practices.

Aside from these concerns, the Army Field Manual on Interrogation was designed as a training document. It is changeable, which means the Congress—and the CIA and FBI—has no idea what techniques may be added or subtracted tomorrow, next month or next year.

Are we really ready in this body to define something as a standard, a changing field manual? When do we ever do that, saying everybody has to follow the Army Field Manual, and the Army Field Manual can be changed when and if it is ready. There are practical consequences. The unclassified military training level is not applicable to questioning high-value detainees.

This is, I suggest, a very bad measure. I believe the bill without this amendment would have been a very good one. I cannot urge my colleagues to vote for it.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the conference report to accompany H.R. 2082.

Mr. WARNER. Have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been ordered.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON), the Senator from Missouri (Mrs. MCCASKILL), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Sentor is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''nay.''

The result was announced—yeas 51, nays 45, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—51

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bayh	Hagel	Nelson (FL)
Biden	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown	Kennedy	Rockefeller
Byrd	Kerry	Salazar
Cantwell	Klobuchar	Sanders
Cardin	Kohl	Schumer
Carper	Landrieu	Smith
Casey	Lautenberg	Snowe
Collins	Leahy	Stabenow
Conrad	Levin	Tester
Dodd	Lincoln	Webb
Dorgan	Lugar	Whitehouse
Durbin	Menendez	Wyden

NAYS—45

Alexander	Crapo	McCain
Allard	DeMint	McConnell
Barrasso	Dole	Murkowski
Bennett	Domenici	Nelson (NE)
Bond	Ensign	Roberts
Brownback	Enzi	Sessions
Bunning	Grassley	Shelby
Burr	Gregg	Specter
Chambliss	Hatch	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Thune
Coleman	Isakson	Vitter
Corker	Kyl	Voinovich
Cornyn	Lieberman	Warner
Craig	Martinez	Wicker

NOT VOTING—4

Clinton	McCaskill
Graham	Obama

The conference report was agreed to.

Mr. REID. Madam President, I move to reconsider vote.

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

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

INDIAN HEALTH CARE IMPROVEMENT ACT AMENDMENTS OF 2007—Resumed

Mr. REID. Madam President, I believe the regular order now is Indian Health. I would ask the Chair to report if that is in fact the case.

The PRESIDING OFFICER. That is correct.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1200) to amend the Indian Health Care Improvement Act to revise and extend that Act.

Pending:

Bingaman-Thune amendment No. 3894 (to amendment No. 3899), to amend title XVIII of the Social Security Act to provide for a limitation on the charges for contract health services provided to Indians by Medicare providers.

Vitter amendment No. 3896 (to amendment No. 3899), to modify a section relating to limitation on use of funds appropriated to the Service.

Brownback amendment No. 3893 (to amendment No. 3899), to acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States.

Dorgan amendment No. 3899, in the nature of a substitute.

Sanders amendment No. 3900 (to amendment No. 3899), to provide for payments under subsections (a) through (e) of section 2604 of the Low-Income Home Energy Assistance Act of 1981.

Mr. REID. Madam President, Senator TESTER has indicated to me that he has an amendment to work on. There are a number of people who want to offer amendments, and I think it would be to our advantage—it is not as if it is the middle of the night; it is still in the 4s—if there could be some amendments offered. We are going to work on this all day tomorrow and hopefully we can finish it Friday. If not, we are going to stay here until we finish it.

Indian health deserves this. There is no group of people in America who deserves our attention more than Indians. It is that way with the 22 different organizations in Nevada and all over the country. So I would hope we can work together.

I think we have had some success during these first few weeks of this year of Congress. We were at the White House with the President signing the stimulus bill. It is time to celebrate that. Was it everything we wanted? No. But it is good work, and we should all be proud of that.

We passed this conference report on intelligence, and the President will have to make a decision on that in the future, as to what he wants to do, but it is out of this body.

I hope we could move forward on Indian health. We have been waiting years to direct the attention to them. The attention is now directed, and with the result of what has happened here, we can spend some quality time on this matter. I hope those who wanted to offer amendments will do so. We can work into the night. I hope we can have some votes tonight. Senator DORGAN and Senator MURKOWSKI are anxious to move forward.

Madam 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.

Mr. SANDERS. 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. 3900

Mr. SANDERS. Madam President, I wish to call up amendment No. 3900, and I ask for its immediate consideration.

The PRESIDING OFFICER. That is a pending amendment.

Mr. SANDERS. Madam President, this tripartisan amendment is being cosponsored by Senators CLINTON, OBAMA, SNOWE, COLLINS, LEAHY, SUNUNU, KENNEDY, GORDON SMITH, COLEMAN, KERRY, STABENOW, SCHUMER, LAUTENBERG, LINCOLN, KLOBUCHAR, MURRAY, CANTWELL, MENENDEZ, and DURBIN.

This amendment is simple and straightforward. At a time when home heating prices are going through the roof—and I think every Member who goes back to his or her State understands that the cost of home heating oil is soaring—people understand that in areas around this country, including the State of Vermont, the weather has been well below zero. What this amendment would do is provide real relief to millions of senior citizens on fixed incomes, low-income families with children, and people with disabilities.

Specifically, this amendment would provide $800 million in emergency funding for the Low-Income Home Energy Assistance Program—otherwise known as LIHEAP—a program that has won bipartisan support year after year here in Congress because people know it works.

Its goal is simply stated: to keep Americans from going cold in the wintertime. It has done this for years, and we have to appropriate more money to make sure we do that again this year. Specifically, $400 million of the $800 million would be distributed under the regular LIHEAP formula, while the other $400 million would be used under the emergency LIHEAP program.

This amendment has strong support not only from many Members of the Senate and Members of the House, but it has strong support from the National Governors Association, the National Conference of State Legislators, the AARP, the National Energy Assistance Directors Association, and many other groups.

Let me very briefly quote from a letter I received from the National Governors Association in support of this amendment.

Additional funding distributed equitably under this amendment will support critically needed heating and cooling assistance to millions of our most vulnerable, including the elderly, disabled and families who often have to choose between paying their heating or cooling bills and food, medicine and other essential needs.

According to the National Governors Association, this amendment will provide much needed energy assistance to at least 1 million American families—1 million. Others already receiving LIHEAP will receive more help due to the skyrocketing costs of home heating fuel.

Let me very briefly quote from a letter I recently received from the AARP. This is what the AARP says: