Thereupon, the Senate, at 12:37 p.m., recessed until 4 p.m. and reassembled when called to order by the Presiding Officer (Mr. FRANKEN).

FDA FOOD SAFETY MODERNIZATION ACT—MOTION TO PROCEED—Continued

Mr. BOND. Mr. President, I ask unanimous consent to proceed as in morning business for up to 15 minutes, with the time to be charged against the debate postcloture.

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

INTELLIGENCE PERSPECTIVES

Mr. BOND. Mr. President, I have had the distinct privilege over the past 8 years of serving on the Senate Select Committee on Intelligence, serving as the committee's vice chairman for the past 4 years. In this role I have been privy to our Nation's deepest secrets, including great successes and some failures. Unfortunately, the failures usually get leaked to the media while most of the successes go unheralded. While I am not at liberty to discuss those successes here, I can witness to the fact that we have an outstanding fleet of intelligence personnel who selflessly sacrifice their time, and sometimes their lives, to protect our great Nation. Those professionals deserve our undying gratitude, and we all can be proud of their service. It has been a distinct privilege to me to oversee their work, and for their dedication to our Nation, I am ever grateful.

As I leave the Senate, having served in this privileged capacity as vice chair of the Intelligence Committee, I leave for my colleagues some thoughts, and recommendations on improvements that can be made on intelligence matters going forward, which I believe will enhance our national security.

First, let me start with the Congress. Members of Congress often like to criticize the executive branch, as is appropriate, but Congress needs to get its own house in order as well. I joined the Select Committee on Intelligence in 2003, and during the past 8 years the committee has had three chairmen: Senators ROBERTS, ROCKEFELLER, and FEINSTEIN; and two vice chairmen: Senator ROCKEFELLER and me. It has been a challenging time, and we have had our highs and our lows. After December 2004, the committee failed to pass an annual authorization bill that could become law for almost 6 years; this was due purely to politics in the Congress.

Although the committee was able to pass unanimously results from an investigation on pre-Iraq war intelligence failures, it was by and large hindered by political infighting for several years. In 2003, a memo was found written by a committee staffer that advocated attacking intelligence issues for political gain to damage the Republican administration and the Republican majorities. That memo was ultimately discredited by my friends on the other side of the aisle, but it marked a low point in the committee's history, and it should never happen again. Chairman FEINSTEIN and I have worked hard to bring the committee back into bipartisan operation of intelligence oversight. We hope that the Intelligence Authorization Act that the President signed into law recently has helped in getting the committees back on track.

One area where I strongly believe the Congress has yet to heed the warnings of the 9/11 Commission and other study groups is in reforming its approach to appropriations for intelligence. That is why in 2008, the SSCI passed a resolution to establish an appropriations subcommittee on intelligence, something the full Senate had already passed in 2004. Yet the Appropriations Committee has failed to act. I continue to believe this is vital to improving oversight and funding of our Nation's intelligence, and I urge the Senate in the next Congress to make this happen.

The past 8 years have been groundbreaking years in Intelligence, particularly as the war on terrorism has played out in Afghanistan and Iraq. As I speak today, U.S. and coalition forces in Afghanistan continue to fight terrorists—al-Qaida, the Taliban, Haqqani, and others who threaten the stability and future of the region. They fight not only to bring stability to the region but to disrupt the sanctuaries and dismantle the organizations that can and do facilitate terrorist attacks against the United States at home, our troops in the field, and our allies abroad.

My profound respect and gratitude goes out to those serving in Iraq, Afghanistan, and across the globe. We have asked so much of them and their families. They have made enormous, in some cases ultimate, sacrifices, and our Nation is forever in their debt.

As we learned in Iraq, fighting the enemy is not enough. A comprehensive counterinsurgency strategy is required. It must combine kinetic power—military attacks against terrorists and insurgents—with ''smart power''—the development of host nation capabilities and infrastructure, and a sensible mix of economic, development, educational, and diplomatic strategies. We know that understanding the complexities of the region and the forces at play puts additional burdens on the resources and capabilities of the intelligence community. But we also know that without a viable and appropriately resourced counter-insurgency strategy, we will not see success in Afghanistan, and the future of Pakistan will remain in doubt. Driving terrorist safe havens out of Afghanistan is crucial but insufficient if al-Qaida and Taliban militants continue to find sanctuary in the remote border regions of western Pakistan.

Eliminating the terrorist threat to the United States that emanates from terrorist sanctuaries in the region is our No. 1 goal. A U.S. withdrawal, in whole or in part, from Afghanistan in the near term would be a tacit, yet unambiguous, approval for the return of Taliban control of Afghanistan. In turn, this would lead to the establishment of more safe havens for many of the world's most violent and feared terrorists.

But what happens when our forces eventually pull back? Replacing those sanctuaries with secure environments and stable governance is the key to ensuring that terrorists do not gain another foothold in the future.

As we have fought this war in Iraq and in Afghanistan, we have learned a lot about al-Qaida, terrorism, and our own intelligence capabilities. On July 9, 2004, the committee unanimously issued its phase I report on the prewar intelligence assessments on Iraq. I view this truly bipartisan effort as one of the committee's most successful oversight accomplishments.

The comprehensive 511-page Iraq WMD report identified numerous analytic and collection failures in the intelligence community's work on Iraq's WMD programs. These underlying failures caused most of the major key judgments in the Iraq WMD National Intelligence Estimate to be either overstated or not supported by the underling intelligence reporting. In turn, American policymakers relied, in part, on these key judgments in deciding whether to support the war against Iraq.

The committee's Iraq WMD Report served as a valuable ''lessons-learned'' exercise. It has had a profound impact on the way the intelligence community does business and interacts with Congress and the White House. It also set the standard for future committee reviews. In my opinion, the committee members and staff who completed the project performed a great service to our Nation.

At the end of 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act. The Governmental Affairs Committee had the lead on this bill, and the act implemented a number of recommendations of the 9/11 Commission, including the creation of the Office of the Director of National Intelligence.

After 6 years, the jury is still out on the ODNI. Some have argued the office is an unnecessary bureaucratic layer. Others have said the office is too big and needs to be downsized. Still others are concerned that the DNI's authority is being undermined by decisionmakers in the White House and the Department of Justice—a point with ample evidence over the past several years. While these observations have some merit, I believe the ODNI serves an important leadership function within the intelligence community and should not be abandoned.

There is, however, room for improvement, so I sponsored a number of legislative provisions that should enhance the DNI's authorities with respect to accountability reviews and major system acquisitions. While some of these

provisions were recently signed into law, more will need to be done to strengthen the effectiveness of the ODNI.

Turning to battlefield intelligence, the committee has spent a considerable amount of time conducting oversight of the CIA's detention and interrogation program. Intelligence from detainees has proven to be a most effective source of intelligence to protect the Nation. That is why we must capture the enemy if at all possible, instead of just killing them. I am concerned lately that due to our lack of effective detention and interrogation policies today our operators in the field feel compelled to kill vice capture. This is understandable, for unless you are in Iraq or Afghanistan, where would you detain enemy combatants to the United States? More troubling to me, we seem to be releasing a number of individuals whom we have already detained, only to see more than 20 percent of them take action against us on the battlefield again. I have a comprehensive approach to this issue that I have been working on with other members that will be introduced on the floor.

Regarding the CIA's interrogation program, I believe the program produced valuable intelligence information. My opinion is not a partisan one. Recently, we learned that the Obama Justice Department and Judge Kaplan, a U.S. district judge for the Southern District of New York, agree with my assessment. Judge Kaplan is presiding over the Federal trial of Ahmed Ghailani, an alleged member of al-Qaida indicted on charges of participating in the bombings of the U.S. embassies in East Africa. Last July, Judge Kaplan agreed with the Department of Justice and found that ''on the record before the Court and as further explained in the [classified] Supplement, the CIA Program was effective in obtaining useful intelligence from Ghailani throughout his time in CIA custody.''

In March 2009, the committee began a bipartisan review of the CIA's interrogation program, based upon carefully negotiated terms of reference. Unfortunately, later that year, the Attorney General decided to re-open criminal investigations of the CIA employees involved in the CIA's detention and interrogation program. I believed then that the Attorney General's decision would impede the committee's ability to conduct interviews of key witnesses, thereby diminishing the value of the review. As a result, I withdrew minority staff from the committee's review. The majority pressed ahead and has refused to comply with committee rules to keep the minority fully and currently informed, but it soon ran into the obstacles I foresaw, with CIA personnel declining to speak with them based on the advice of counsel. And who would blame them?

The majority has spent valuable time and resources on this matter, and the CIA has conveyed that it had to pull personnel off current mission requirements to support their effort. I believe that limited committee and government resources would be better spent on topics of oversight interest on programs that are in operation today.

One of the most disturbing leaks that I have witnessed during my tenure on the committee occurred in December 2005, when the New York Times published a story describing the President's Terrorist Surveillance Program, or TSP. Some view the leakers as heroes. I do not share that view. In fact, intelligence operators in the field at the time told me that their ability to gain valuable information was reduced dramatically. Michael Hayden, then Director of the CIA, stated that we had begun to apply the Darwinian theory to terrorism because from then on we would only be catching the dumb ones. Frankly, I am amazed the Department of Justice has yet to prosecute Thomas Tamm, a DOJ attorney who openly bragged in a Newsweek article that he intentionally revealed information about this highly classified and compartmented program. Tamm and his fellow leakers are traitors who have done serious damage to our national security. Yet this administration refuses to prosecute this open and shut case. Why?

In order to ease concerns of critics, the President's TSP was submitted to and approved by the Foreign Intelligence Surveillance Court. Unfortunately, in May 2007, this new arrangement started to unravel when the FISA Court issued a ruling that caused significant gaps in our intelligence collection against foreign terrorists.

Although DNI Mike McConnell pleaded to Congress for help, the Congress failed to respond. Under the looming pressure of the August recess, Republican Leader MITCH MCCONNELL and I co-sponsored the Protect America Act which Congress passed in the first week of August 2007.

The act did exactly what it was intended to. It closed the intelligence gaps that threatened the security of our Nation and of our troops. But it was lacking in one important aspect. It did not provide civil liability protections from ongoing frivolous lawsuits to those private partners who assisted the intelligence community with the TSP.

Following the passage of the Protect America Act, I worked to come up with a bipartisan, permanent solution to modernize FISA and give those private partners needed civil liability protections. The committee worked closely for months with the DNI, the Department of Justice, and experts from the intelligence community to ensure that there would be no unintended operational consequences from any of the provisions included in our bipartisan product.

In February 2008, after many hearings, briefings, and much debate on the Senate floor, the Senate passed the FISA Amendments Act by a strong, bipartisan vote of 68–29. The Senate's bill reflected the Intelligence Committee's conclusion that those electronic communications service providers who assisted with the TSP acted in good faith and deserved civil liability protection from frivolous lawsuits. The Senate bill also went further than any legislation in history in protecting the potential privacy interests of U.S. persons whose communications may be acquired through foreign targeting.

After months of protracted and difficult negotiations with the House, Congress finally passed the FISA Amendments Act on July 9, 2008, and the President signed it into law the very next day. The final law achieved the goals of the original Senate bill, albeit less elegantly. While the act is more burdensome than I would prefer, we did preserve the intelligence community's ability to keep us safe, and we protected the electronic communications service providers from those frivolous lawsuits.

I consider my involvement in the passage of the Protect America Act and the FISA Amendments Act to be two of the highlights of my legislative career. There is, however, still work to be done. A number of provisions in the FISA Amendments Act are set to sunset at the end of next year. Also, there are three additional FISA provisions related to roving wiretaps, business records court orders, and the lone wolf provision, that are set to expire on February 28, 2011. I urge Congress and the President to work closely together to ensure that the provisions are made permanent, without adding unnecessary requirements or limitations that will hamper our intelligence collection capabilities.

I mentioned earlier that recently the Intelligence Authorization Act of 2010 was signed into law. When I became vice chairman of the committee in 2007, my top priority was to get an intelligence authorization bill signed into law, and I am thankful that with the leadership of Senator FEINSTEIN, we finally met that goal. The 2010 intelligence authorization bill, while light on authorization, was heavy on legislative provisions. I am pleased that a number of good government provisions which I sponsored were included in the bill.

The law imposes new requirements on the intelligence community to manage better their major systems acquisitions. Too often, we have seen IC acquisitions of major systems, i.e., over $500 million, balloon in cost and decrease in performance. These provisions will operate together to address the longstanding problem of out-of-control cost overruns in these acquisitions. Modeled on the successful Nunn-McCurdy provisions in title 10 of the United States Code, these provisions encourage greater involvement by the DNI in the acquisitions process and help the congressional intelligence committees perform more effective and timely oversight of cost increases.

Another good government provision established a requirement for the intelligence community to conduct vulnerability assessments of its major systems. A significant vulnerability in a major system can impede the operation of that system, waste taxpayer dollars, and create counterintelligence concerns. This provision requires the DNI to conduct initial and subsequent vulnerability assessments for any major system, and its items of supply, that is included in the National Intelligence Program. These assessments will ensure that any vulnerabilities or risks associated with a particular system are identified and resolved at the earliest possible stage.

A third good government provision gives the DNI the authority to conduct accountability reviews of intelligence community elements and personnel in relation to their significant failures or deficiencies. It also encourages IC elements to address internal failures or deficiencies, something they at times have been reluctant to do. In the event these elements are reluctant or unable to do so, this provision gives the DNI the authority he needs to conduct his own reviews.

Finally, my future budget projection provision requires the DNI to do what every American family does on a regular basis—map out a budget. The DNI, with the concurrence of the Office of Management and Budget, must provide congressional Intelligence Committees with a future year intelligence plan and a long-term budget projection for each fiscal year. These important planning tools will enable the DNI and the congressional intelligence communities to ''look over the horizon'' and resolve significant budgetary issues before they become problematic.

As I leave the Senate and contemplate what I have learned during my service in Congress and on the Intelligence Committee, I have a number of recommendations for future members and leaders of the committee.

One of the intelligence community's greatest failures was its complete waste of billions of dollars spent to develop satellites that never took a single picture. Senator FEINSTEIN and I have strongly voiced our abiding concern to all four DNIs that the Intelligence Community is still spending far too much money on imagery satellites that are too big, too few, and too costly. We have put forth solid alternatives that would produce more satellites at far less cost, be less fragile, and perform as well or better than the unaffordable plan in the President's budget.

Just this month, an independent analysis by some of the country's very best astrophysicists confirmed that such an alternative, based on a combination of commercial and classified technologies, was essentially as capable, but about half as expensive as the administration's program. Sadly, our ideas have met with ''NIH'' resistance—''not invented here.''

Even worse, it appears that this resistance has been based in part on the NRO's unhealthy reliance upon, and apparent subordination to, the contractor that builds these incredibly expensive satellites. In spite of this resistance, Congress saw fit to appropriate over $200 million to explore a better path forward, and I urge my colleagues in both Houses of Congress to sustain that effort. I also urge the new DNI, in the strongest terms, to reconsider this issue afresh, and with an open mind. Our committee recommended his confirmation on the hope and expectation that he would do so.

The committee has been following the cyber threat issue for a long time. Cyber attacks happen every day. Our government, businesses, citizens, and even social networking sites all have been hit.

In an ever increasing cyber age, where our financial system conducts trades via the Internet, families pay bills online, and the government uses computers to implement war strategies, successful cyber attacks can be devastating. Unless our private sector and government start down a better path to protect our information networks, serious damage to our economy and our national security will follow.

Senator HATCH and I introduced a legislative proposal that takes the first step by creating a solid infrastructure that is responsible and accountable for coordinating our government's cyber efforts. The bill is built on three principles. First, we must be clear about where Congress should, and, more importantly, should not legislate. Second, there must be one person in charge—someone outside the Executive Office of the President who is unlikely to claim executive privilege, but who has real authority to coordinate our government cyber security efforts. Third, we need a voluntary public/private partnership to facilitate sharing cyber threat information, research, and technical support.

We believe that once this infrastructure is established, the assembled government and private sector experts will be able to provide guidance on the next steps—including any further legislation—needed to enhance our our cyber safety.

In the aftermath of 9/11, we captured hundreds of al-Qaida terrorists and associates. Many of these could be called low-level fighters—of the same type as the 9/11 hijackers but no less dangerous to our security. Others, such as 9/11 mastermind Khalid Sheikh Mohammed and senior al-Qaida operative Abu Zubaydah, were identified as high-value detainees and placed in the CIA's interrogation and detention program.

After details about the program were leaked in the Washington Post, the President announced, in September 2006, that these high-value detainees would be transferred to the detention facility at Guantanamo Bay. Since 2002, Gitmo has housed terrorists picked up on the battlefield or suspected of terrorist activities. Today, 174 detainees remain at Gitmo.

In 2008, in a sharply divided opinion and despite clear language from Congress to the contrary, the Supreme Court gave Gitmo detainees the constitutional right to challenge their detention in our courts. Since then, 38 detainees have successfully challenged their detention.

With the recidivism rate for former Gitmo detainees at over 20 percent, Congress must step in once again and draw some boundaries. We cannot afford to let more potentially dangerous detainees go free. We need a clear, consistent framework for these habeas challenges with a standard of proof that takes into account the wartime conditions under which many of these detainees were captured. It is unreasonable to hold the government to the standards and evidentiary tests that apply in ordinary habeas cases. There is nothing ordinary about war and our habeas laws must reflect that.

Now that the President has abolished the CIA's program and ordered the closure of Gitmo, we need clear policies for holding and questioning suspected terrorists, especially overseas. We must abandon the automatic impulse to Mirandize terrorists captured inside the United States. Prosecution can be a very effective response to terrorism, but it must never take precedence over getting potential lifesaving intelligence.

I have been working with several of my colleagues on legislation that would set clear lines for law of war detention and habeas challenges. Our Nation should not risk another Gitmo detainee rejoining the fight. We cannot risk losing more and timely intelligence because we have no system for detaining and interrogating terrorists. These are critical national security issues and Congress's voice must be heard as soon as possible.

Last December, Umar Farouk Abdulmutallab attempted to blow up a Northwest Airlines flight as it headed to Detroit. Shortly after the failed attack, al-Qaida in the Arabian peninsula claimed responsibility. AQAP counts among its senior leadership and members former Gitmo detainees who have returned to their old ways. As the Christmas Day attack reminded us, rising recidivism rates for Gitmo detainees are more than just a statistic and claims that a 20-percent recidivism rate ''isn't that bad''—as one senior administration official put it—must be challenged.

As part of its goal to close Gitmo, the administration continues its efforts to persuade other countries to accept detainees. Whatever one's views on closing Gitmo, we all have an interest in making sure that no former Gitmo detainee kills or harms us or our allies. As these transfers continue, the Intelligence Committee—and Congress—must pay close attention to these and earlier transfer decisions.

As part of the committee's oversight responsibilities, staff have been traveling to those countries that accepted detainees under the current and previous administrations. They have also been reviewing assessments prepared by the intelligence community and the Guantanamo Review Task Force and other documents. A lot of work has been done, but there is more to do.

Thus far, our review has raised some significant concerns. We all know that transfers to Yemen are a bad idea, but other countries may not have either the legal authority or capability to keep track of these detainees effectively. Still others simply view these former detainees as being free. If we do not know what these detainees are doing, we end up relying on luck that we will catch them before they act.

Having luck on your side is always a good thing, but it stinks as a counterrorism policy. I urge my colleagues on both sides of the aisle to pay close attention to this issue. Unfortunately, it is one that I think will continue to be around for a very long time.

I hope these reflections, observations, and recommendations will be of use to the members of the next Congress. I have been deeply honored to serve on the Intelligence Committee with my distinguished and talented colleagues. I also salute the fine men and women of the intelligence community who have given so much for the safety of our country. I wish them all well in their future endeavors.

In addition, I wish to address an obvious problem—leaks. I have already made reference to some of the more disastrous leaks that occurred during my tenure, but unfortunately, these were just the tip of the iceberg. There are simply too many to list. I shudder to think about the sources and methods that have been disclosed, and the lives that will likely be lost, as a result of the obscene amount of classified information compromised by Wikileaks. Of course, to call this a leak case is gross mischaracterization; it is more like a tidal wave.

We are blessed with our open society and our many freedoms. However, our ability to protect these freedoms and preserve our national security depends upon our ability to keep our secrets safe.

This problem needs a multifaceted solution. We must first deter and neutralize the leakers. There should be significant criminal, civil, and administrative sanctions that can be imposed on leakers. Leakers should face significant jail time, pay heavy fines, forfeit any profits, lose their pensions, and be fired from their jobs. We should also not allow the first amendment to be used as a shield for criminal activity. It should be a crime to knowingly solicit a person to reveal classified information for an unauthorized purpose or to knowingly publish or possess such information. Leaks will not stop until a significant number of leakers have been appropriately punished.

Other steps may lessen the problem. Government agencies in possession of classified information should ensure that information is properly classified in the first instance and that their employees are thoroughly trained in security procedures. Also, we should explore technological solutions for tracking classified documents and establishing singular audit trails.

On a related issue, we also need to ensure that the security clearance process is repaired. An excellent interagency reform process has applied more resources and better processes to increase the efficiency of the system, eliminate backlogs, and in many cases, shorten the time required to process a security clearance. Although significant progress has been achieved in recent years, there is still a lot of room for improvement. We must continue to use technology to wring more efficiency from the security clearance system, and make it less of an obstacle to success for our intelligence and law enforcement agencies.

Just as importantly, we must modernize the security clearance system to make it a more useful measure of suitability for serving in sensitive government positions. The interagency security clearance reform process is studying a new process, called ''continuous evaluation,'' which seeks to use automated records checks and other similar processes to assess risk in populations of cleared personnel on a regular basis, rather than waiting five years to conduct a reinvestigation, as we currently do.

The devil will be in the details, but I believe a ''continuous evaluation'' system could be much more effective than our current practices in detecting security threats in our agencies before they become a problem.

The use of biometrics—fingerprints, DNA, facial recognition scans, and the like—has yielded dramatic dividends on the battlefields of Iraq and Afghanistan, and is a vital tool for detecting terrorist threats before they arrive on our shores. Biometrics help us separate the good guys from the bad guys on the battlefield, and can ensure that we know that the foreign tourist, businessman, or student who wants to visit the United States is not actually a dangerous terrorist.

We have made significant progress in the collection and use of biometric data in the last decade, but there are still too many policy and procedural obstacles to sharing biometric data between U.S. Government agencies. Moreover, far too much of the funding for these important biometric efforts is contained in supplemental funding requests.

We need to continue breaking down the barriers to sharing biometric data. We need a roadmap in the base intelligence budget for the permanent sustainment of our biometric efforts in the decades to come. Biometrics must remain an important tool for dealing with national security threats well beyond the end of combat operations in Iraq and Afghanistan.

The committee spent much of 2005 and 2006 working on legislation related to the expiring provisions of the USA PATRIOT Act. We held numerous hearings and reported out a bill that contained a number of provisions that were ultimately included in the USA PATRIOT Improvement and Reauthorization Act.

Among other things, the act made permanent 14 of the 16 USA PATRIOT Act provisions that were set to expire at the end of 2006. It extended the sunsets of three FISA provisions—roving wiretaps; business record court orders; and lone wolf—until the end of 2009. Also, it created a new National Security Division within the Department of Justice, supervised by a new assistant attorney general, with the goal of ensuring that the information sharing walls that existed prior to 9/11 are never reconstructed.

Since the terrorist attacks of September 11, the size and budget of the intelligence community has nearly doubled, and much of that growth has been in the IC's analytic community. Even as we hire more and more analysts to focus on national intelligence priorities, most of them work on current and tactical missions—answering questions and giving briefings on near-term issues—without ever producing a deep understanding of longer term critical issues.

Furthermore, the intelligence community continues to operate as a loose confederation, with no universal standards for analytic training, tools, technology, and personnel policies. These issues, coupled with a lack of a federated communitywide analytic work plan, often result in redundant or conflicting analyses, and in some cases, a major gap in coverage or understanding of issues of significant concern. It is time for the ODNI to bring analytic direction and standards to the IC so that the analytic community can become a true community of analysts.

I have often voiced my concern about the abysmal state of the intelligence community's foreign language programs and the slow pace of progress in correcting deficiencies. The collection of intelligence depends heavily upon language, whether information is gathered in the field from a human source or from a technical collection system.

More than 9 years after 9/11, and more than a year after a major shift in focus in Afghanistan and Pakistan, the cadre of intelligence professionals capable of speaking, reading, or understanding critical regional languages such as Pashto, Dari, or Urdu remains in critically short supply. In spite of significant congressional interest and funding, progress has been disappointing.

Persistent critical shortages in some languages could contribute to the loss of intelligence information and affect the ability of the intelligence community to exploit what it does collect. I

encourage IC leaders to make foreign language learning and maintenance a priority mission and a ''must fund'' for resource allocation.

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

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

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

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

COACH DAN CALLAHAN

Mr. DURBIN. Mr. President, I wish to say a few words about an extraordinary man, a friend of mine, who died this week in Carterville, IL. Dan Callahan was the head baseball coach at Southern Illinois University at Carbondale for the last 16 years. He died Monday at the age of 52.

Dan Callahan was not only a good coach, he was a great man. His conduct on and off the field inspired just about everybody who ever met him.

Dan died of neurotropic melanoma, a very rare and very serious form of skin cancer. His struggle with cancer began almost 5 years ago when he detected a little black spot on his lower lip. The spot was successfully removed, but the cancer remained and grew.

After receiving his diagnosis, Dan Callahan silently endured the rigors of his treatment while continuing to coach his baseball team. In the 2007, 2008 seasons there were times he probably should have stayed home because he was too weak to do much but sit in the dugout, but he came to work and he came to that ball yard every day. He didn't miss a single game.

The next season Dan endured more intense treatment, including a surgery that removed part of his right jaw. It was only then that he went public with his illness. Eventually, the cancer cost Dan not only his job but the sight in his right eye and the hearing in his right ear. But it didn't stop the coach. The losses damaged his depth perception and hearing. But if Dan Callahan, once a pitcher in his own right, wasn't able to throw a fastball with quite the same speed and control, he taught his players an even more important lesson: how to push through adversity.

The chemo and surgery forced him to miss all of his team's road trip games during the 2009 season, and that bothered him even more than the cancer. He believed a coach should be with his players. Somehow, this past season—his last season—Dan was able to be on the bench for nearly every game. He considered that a great victory, and it was.

The president of Southern Illinois University, Glen Poshard, a former Congressman, said about Danny Callahan: ''As far as I'm concerned, he was the face of courage.''

The Missouri Valley Conference recognized that fact a year ago when it awarded Dan Callahan its ''Most Courageous Award,'' an award that honors those who have demonstrated unusual courage in the face of personal illness, adversity, or tragedy. In announcing Dan's selection, the Missouri Valley Conference Commissioner Doug Elgin said:

> Dan Callahan personifies professionalism in the face of personal adversity, and he's been an inspiration to his baseball student-athletes, and really all those who know him. We feel honored to be able to recognize him.

Dan had a great sense of humor. He used to joke that he led the league in one category: surgeries. In fact, he leaves a rich record of athletic achievement. In 22 seasons as an NCAA Division I head coach, Dan Callahan compiled an impressive record of 595 wins and 695 losses, and 442 of those nearly 600 victories were at Southern Illinois, making him the second winningest coach in SIU's history.

Dan Callahan was one of just five coaches in Missouri Valley Conference history to win over 200 league games. In his time at Carbondale, he produced 23 Major League draft picks and 19 First-Team All-MVC selections.

Baseball was Dan's lifelong love and passion. As an athlete, he pitched two seasons at the University of New Orleans, two at Quincy College, from which he graduated. After college, he pitched professionally in both the San Diego Padres and Seattle Mariners' organizations.

His first coaching job was in my hometown at Springfield High School, his alma mater. He also coached at Eastern University for 5 years before heading down to Carbondale.

Last October, Dan began chemotherapy. His doctors prescribed a three-drug cocktail that includes Avastin, one of a new generation of anticancer drugs that works by preventing the growth of new blood vessels that support tumors. Avastin can buy time and a better quality of life for the people with advanced cancer, but it is very expensive. In Dan's case, it cost $13,686 a treatment—about $100,000 a year.

Unfortunately, Dan's health insurance company, the largest health insurer in America, a company that had paid for surgery to remove the initial spot from his lip and the second surgery to remove part of his jaw, refused to pay for the Avastin. The chemo drug was FDA-approved and something of a wonder drug in treating advanced colon, lung, breast, and other cancers. But the insurance company said its use to treat cancers like Dan's was experimental so they wouldn't cover it.

With the support of family and friends, Dan and his wife Stacy found $27,000 to pay for the first two treatments. Washington University in St. Louis provided another $50,000; that bought him four more treatments. Through all the chemo and radiation treatments and all the painful surgeries, Dan Callahan never complained. He was never bitter and he never felt sorry for himself. But he worried about other people and other families who needed expensive drugs and couldn't afford them. Dan thought it was unfair that patients could be denied treatment that could extend and maybe even save their lives simply because of the drug's high price. We talked about that last year while the Senate was debating America's broken health care system. I thought about Dan Callahan when I voted for the Affordable Health Care Act.

In his prime, Dan Callahan stood 6 feet 4 and weighed 225 pounds. The cancer took its toll. The last couple of months were rough. He spent most of them at Barnes Hospital in St. Louis. A little more than a week ago, he told his doctors he needed to take a break so he could attend a Thanksgiving get-together with his team. He went home for hospice care and died 3 days later surrounded by the people he loved.

I offer my deepest condolences to Stacy, Dan's wife of 21 years, and their daughters Alexa and Carly, and his parents Ann and Gene. Gene and Ann are my closest friends and I have known Dan since he was 9 years old. I also wish to say to Sherry and Lynn, his sisters, he couldn't have come from a better family. My thoughts are also with the student-athletes whom Dan coached and inspired over the years. Dan's passing is a deep loss for so many people.

On Monday, Dan is going to have a send-off. It is going to be at the baseball diamond. Dan's family and his SIU family are hosting a celebration of his life at the SIU baseball diamond where he spent so many years. There will be a party afterwards with hot wings and beer. The invitation says, ''Please dress casually. No suits. No ties.'' That is exactly what Dan would have wanted.

Jim Ruppert, the sports editor for my hometown newspaper, the State Journal Register in Springfield, was also Dan Callahan's brother-in-law. In his column the day after Dan died he said:

> When the official scorer in the sky makes his final ruling, he will say Dan Callahan lost his nearly 5-year battle with cancer Monday afternoon at his home in Carterville. But the 52-year-old Callahan was a baseball guy who went down swinging, battling the dreaded disease to the bottom of the ninth inning.

Dan Callahan coached the sport he loved, and it is a unique sport. It is one of the few team sports that has no timeclock. Baseball is only over when it is over, and that is the way life is too. At the end of his life, Dan Callahan still sits in that dugout and with a watchful coach's eye, he scans the field and sees hundreds of young men whose lives he touched, players and families who will never forget him. He taught them more than baseball. He taught them about life and courage, about themselves and their relationships with others.

I have known Dan all his life. I consider it a blessing to have counted him as a friend. Lou Gehrig, when he learned of his illness, said he was still the luckiest man on the face of the Earth. Dan Callahan felt the same way about himself and for the same reasons. Whether he was the luckiest man on Earth, I don't know, but I do know that all of us who had the good fortune to know Dan Callahan were lucky. We were inspired by his courage and his dignity and we will miss him.

CONGRATULATING STAN ''THE MAN'' MUSIAL

This is another baseball-themed speech which I didn't expect to give on the floor of the Senate, but today is a happy day for me.

I grew up in East Saint Louis, IL. I learned about God and church, but the only god I was sure of played for the St. Louis Cardinals and his name was Stan Musial. The first baseball glove I ever owned was a Rawlings leather glove that had Stan Musial's name written on the edge of it. I used to do what kids my age did. We would wrap rubberbands around the glove with the baseball in it to get that pocket just right and then we would pull that ball out and we would rub it with Glovolium, some kind of oil concoction that we thought made it supple and made it easier to catch the ball. I rubbed that oil on my glove so hard so many times I was the only one who would still read his name on that glove. I kept it forever until my wife said, What are you doing with this old thing, and I said it was my prized possession when I was about 10 years old, and it still is.

The good news is that my feelings for Stan Musial are shared by the President of the United States. He may be a Chicago White Sox fan, but he knows a great champion when he sees one. That is why the announcement today that Stan ''The Man'' Musial is going to receive the Presidential Medal of Freedom makes me feel so good.

The one thing about Stan that I found so interesting is here was one of the most public figures in baseball of his time and I never heard a negative word about him, not about his professional life or his public life. He served this country not only as a hero on the baseball diamond, but he left his team to serve in the military. He went back as the Presiding Officer did—to entertain the troops and serve as well. He cared about this country. He was a champion on and off the baseball field.

After playing 22 seasons in Major League Baseball for the St. Louis Cardinals from 1941 to 1963, Musial was elected to the Baseball Hall of Fame in 1969. Over that time, he compiled a lifetime batting average of .331—how about that—with 3,630 hits, 475 home runs, and 1,951 RBIs, appearing in 23 World Series games and 24 All-Star games. He is one of only three players to have run over 6,000 bases in his career, right behind Hank Aaron and Willie Mays.

A sign of his great sportsmanship, Stan was never once ejected during his career spanning more than 3,000 games. Both in and out of a Cardinal uniform, Stan exemplifies the values of sportsmanship, discipline, hard work, grace, consistency, excellence, and humility. He is truly deserving of this Medal of Freedom.

Let me say a word about my colleague CLAIRE MCCASKILL. No one has worked harder to impress upon the White House how important this Presidential Medal of Freedom is, not only to Stan Musial but Cardinal fans alike and those of us who think he is one of the greatest Americans. I salute CLAIRE MCCASKILL's dogged determination to convince the White House the President is well served by awarding this man an honor for his life on the baseball diamond and off the diamond, and serving this country in so many ways.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

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

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

PARITY FOR HISPANIC FARMERS

Mr. MENENDEZ. Mr. President, I rise to speak of what I have addressed in the past about injustice. It is about the reality that it is no secret that decades of discrimination in lending practices at the United States Department of Agriculture have made it difficult, if not impossible, for minority farmers—specifically Hispanic and women farmers—to make a living at what they love to do, leaving many no choice but to lose their farms and ranches they have tended all their lives, in many cases from generation to generation. That is why I rise today in support of parity for Hispanic and women farmers. I rise so that all the victims of discrimination in this case are treated equally, fairly, and are adequately compensated for the damages they suffered regardless of their race or gender.

The Department of Justice's proposal to Hispanic and female victims is certainly a first step toward closing the entire book on the U.S. Department of Agriculture's discrimination. But, frankly, there appears to be some contradiction between the proposal given to these two groups and the declared objectives of providing parity among the different groups who suffered discrimination.

Here is the situation. African-American victims of discrimination are on a path to receive approximately $2.25 billion to resolve their claims. Victims who filed on time were afforded the opportunity to choose from two different tracks. First, they could present substantial evidence of discrimination which, if valid, entitled the victim to a monetary settlement of $50,000 plus relief in the form of loan forgiveness and offsets of tax liability or they could prove their claims using evidence which was reviewed by a third-party arbitrator who decided how much damages to award, if any.

This system took into account the fact that many if not most of the documents from this era were destroyed by the U.S. Department of Agriculture, making it extremely difficult for victims to prove their claims, while also giving claimants the opportunity to seek more than $50,000 if their case was especially egregious and their losses were severe. There was not a cap on the amount of money awarded. There was not a cap on the number of claimants who could recover damages, which allowed the merits of each individual's claims to be the sole basis for determining what they received. That process appears to be right in line with the stated goal of determining the appropriate course of action for each claim based on the merits of the case and only on the merits. I certainly commend that approach.

However, when it comes to Hispanic and women farmers, the Justice Department has used legal maneuvers to prevent Hispanic and women farmers from achieving class status. Legal maneuvers should not be what the Department of Justice is all about; justice is what the Department should be all about.

Unfortunately, I do not believe the proposal which has been presented to the Hispanic and female victims meets that standard of justice, nor does it employ the fair method utilized in the Pigford I settlement or the equity that is needed. Instead, it puts a cap on the damages each victim could receive and on the total amount that can be awarded to all victims. This is not in parity with the Pigford I settlement and could potentially leave thousands of Hispanic and female victims with only a modicum of relief and far less justice than their counterparts.

Specifically, while Pigford I awarded a minimum of $50,000 to victims, the proposals to Hispanics and females will only award victims up to that amount. What this means is that Hispanic and female victims, even if they suffered millions of dollars in damages, lost their farms, lost their families' heritage in the process, lost their livelihoods, will not receive more than $50,000 and will not be made whole. Farmers who were denied a loan and, as a result, in the words of then-Secretary of Agriculture Glickman, ''lost their family land, not because of a bad crop, not because of a flood, but because of the color of their skin,'' will never be able to rebuild their lives and recover the land with a fraction of $50,000.

If that is not enough, the Department of Justice-imposed cap on the total amount of money that can be awarded to Hispanic and women victims could arbitrarily reduce each claimant's award far below the $50,000 individual cap. You may ask why. Here is the reason: because there are likely to be far more claims filed by Hispanic and women farmers than were filed by African-American farmers. Yet the amount allocated for Hispanic and female

claims is almost $1 billion less than provided to African-American claimants. This is despite the fact that, according to the Department of Agriculture census, in the years in question—from 1982 to 1997—Hispanic- and female-operated farms far outnumbered African-American-operated farms by almost 7 to 1.

If the Department of Justice estimates are correct and approximately 80,000 valid claims will be made by African Americans through Pigford I and Pigford II, it is safe to assume that at least this many and likely many more Hispanic and female farmers who were discriminated against will file valid claims. Even using the very conservative estimate of 80,000 valid claims for Hispanics and females, a $1.3 billion overall cap will provide each claimant with about $16,625. This amount will shrink even further if there are more than the 80,000 claimants and tax forgiveness funds are counted against the $1.3 billion cap.

Think about this. Under this method, the amount each victim will receive will depend on how many other victims there were, not on the merits of each individual case. Not only is that not fair, but it is perverse because each victim will actually be punished the more the U.S. Department of Agriculture discriminated since the more valid claims there are, the less each victim will receive. A structure has been set up that, instead of pursuing justice and equity, actually works to the detriment of those who have already been discriminated against because the more that have been discriminated against and prove their case, the less each one will receive because of this cap.

Finally, the process proposed for administering Hispanic and female claims seems arbitrary and needlessly complicated. In contrast to Pigford claimants, Hispanic- and women-owned farms would not have the benefit of a court-approved notice or any of the procedural protections associated with a class action process.

The underlying facts of the claims made by African Americans, Hispanics, females, and Native Americans are nearly identical.

I commend the President and his administration for making some effort toward delivering justice to women and Hispanic farmers. That is why I urge the administration to guarantee that the relief to be provided to women and Hispanic farmers be just and consistent with that provided to African-American victims who filed on time. In the words of Timothy Pigford, the lead plaintiff in the Pigford case, Hispanics and females ''suffered the same discrimination by the U.S. Department of Agriculture as African American farmers.'' They suffered the same discrimination by the Department of Agriculture as African-American farmers.

Again quoting Mr. Pigford:

. . . class certification is a procedural matter that does not address the underlying discrimination that is in fact admitted.

It is, in fact, admitted. There is not a dispute about whether discrimination took place. It is, in fact, admitted. The indisputable fact remains that farmers and ranchers—particularly women, African Americans, Hispanics—were denied access to U.S. Department of Agriculture loans, to farm benefits and credit services due to their race, their ethnicity, their gender. They were not given proper opportunity for recourse. In the process of being denied those opportunities, they lost, in many cases, their land or sold parts of their land to keep a little piece of it. The only thing that could be worse than the original discrimination, ironically, is if it were to treat the victims of that discrimination differently based on their race, ethnicity, or gender.

Justice for one cannot masquerade as justice for all. I applaud the USDA for taking a big step toward universal justice in this case by recognizing the need to put aside technical questions about class certification and address the underlying valid claims of discrimination.

I understand that this administration inherited this problem, like so many others, and is now in the position of cleaning up the mess left by its predecessors. I applaud them for seeking to right an injustice. But I do not think, nor can I accept that you can dispense justice when you know that the facts are such that, in fact, there is no dispute as to the discrimination, that you can dispense justice piecemeal, or that you can treat victims similarly situated, almost identically situated and harmed, with justice for some and not for all. We need to make this right. We need to make the victims whole. We need to do it fairly, justly, and soon.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

THE SAN FRANCISCO GIANTS

Mrs. FEINSTEIN. Mr. President, I rise to speak on the bill before us. But before I do, one thing I was remiss in not doing, listening to Senator DURBIN speak about Stan Musial, is pointing out what has happened in San Francisco, and that is that the San Francisco Giants have won the World Series with a team that was just amazing. To see a team, I think, that were essentially outcasts—and some would say misfits—come together, play with teamwork, develop a world-class pitching staff, a defense where double and triple plays would happen, is really quite amazing. I had the pleasure of going to the playoff games during the recess, as well as the World Series games, and it was a very special treat. I wish to offer my commendation to that great team. It was quite wonderful.

Now down to business.

Mr. President, it appears that I will be blocked from offering an amendment on bisphenol A, to the food safety bill. So I come to the floor to express my disappointment and my very serious concern about the continued use of this chemical in children's products.

There is mounting scientific evidence that shows that BPA is linked to harmful health effects. Over 200 scientific studies show that even at low doses, BPA is linked to serious health problems, including cancer, diabetes, heart disease, early puberty, behavioral problems, and obesity. I know there is not yet consensus on the science and there is still research to be done. But I also know this chemical is so widespread—it has been found in 93 percent of Americans. I know BPA is thought to alter the way the body chemistry works. Babies and children are particularly at risk because when they are developing, any small change can cause dramatic consequences.

To put it simply, the fact that so many adverse health effects are linked to this chemical, the fact that this chemical is so present in our bodies, and the fact that babies are more at risk from its harmful effects leads me to believe there is no good reason to expose our children to this chemical.

My great concern for its continued use, particularly in children's products, is the reason Senator SCHUMER, my cosponsor, and I, who introduced a bill a year and a half ago—why he and I have been willing to compromise, to be flexible, and to try to work out an agreement to move this forward. For 7 months, we have been negotiating with Senator ENZI, the distinguished ranking member handling this bill on the floor, hoping for a compromise that would enable this amendment on BPA to be placed in the food safety bill. It looks as if there will not be amendments; therefore, I have no opportunity to offer an amendment.

But last evening at about 6:15, Senator ENZI and I reached an agreement which would ban the use of BPA in baby bottles and sippy cups within 6 months of the enactment of this legislation. It would require that the FDA, the U.S. Food and Drug Administration, to issue a revised safety assessment on BPA by December 1, 2012—this is important because it would make certain the date that the FDA has to assess the safety of BPA. And third, it would include a savings clause to allow States to enact their own legislation.

I wish to thank the ranking member for his agreement. It meant a great deal to me. I thought, aha, we are really close to making a beginning step on this problem. Unfortunately, today it became clear that the American Chemistry Council has blocked and obstructed this agreement from being added to the food safety bill. Therefore, language cannot be in the bill. I regret that the chemical lobby puts a higher priority on selling chemicals than it does on the health of infants. I am stunned by this.

This agreement was but a small step forward, a simple movement to ban BPA in baby bottles and sippy cups, a simple move to protect children.

All it did was ban BPA in baby bottles and sippy cups until the FDA's safety assessment could be revised. The

chemical lobby came in at the 11th hour opposing this ban, which is something my colleagues on the other side of the aisle had agreed to.

Now, because of this, my colleagues on the other side of the aisle are pulling their support. My goodness. This is so simple. How can anybody put a priority on selling chemicals above the health of infants? Major manufacturers and retailers are already phasing out BPA from their food and beverage products for children. So why should this be stopped?

The products used to give food and drink to children all have safe alternative BPA packaging available. At least 14 manufacturers have already taken action against BPA. Here they are: Avent, Born Free, Disney First Years, Evenflo, Gerber, Dr. Brown's, Green to Grow, Klean Kanteen, Medala, Nuby Sippy Cups, Munchkin, Playtex, Thinkbaby, Weil Baby. All these manufacturers are taking BPA voluntarily out of their baby bottles and sippy cups, but we cannot get it into a simple bill.

Retailers are taking actions not to sell these products with BPA in them: CVS, Kmart, Kroger, Rite Aid, Safeway, Sears, Toys ''R'' Us and Babies ''R'' Us, Walmart, Wegmans, and Whole Foods have already taken this action.

I ask unanimous consent that the list be printed following my remarks.

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

(See exhibit 1.)

Mrs. FEINSTEIN. At this point, seven States have moved to enact laws banning BPA from children's products: Connecticut, Maryland, Minnesota, New York, Vermont, Washington, Wisconsin. The city of Chicago also has a ban. These entities have already taken action. California is just a few votes short of taking this action and I hope will come back this next legislative session and take it.

Bills are also pending in Illinois, Maine, Massachusetts, Missouri, Pennsylvania, and Washington, DC, and numerous companies are marketing BPA-free products. Other countries are moving forward. Canada declared BPA toxic and banned it from all baby bottles and sippy cups. Denmark and France also have national bans on BPA in certain products.

So here is the point. The problem has been recognized, and steps are being taken by countries, States, companies, and retailers. Yet the chemical lobby in this country is keeping this amendment out of the food safety bill. Why? Only one reason. Because the chemical companies want to make money to the longest point they can by selling a chemical which is linked to all these harmful health effects.

Their resistance to accept this very small proposal is astounding. We have compromised in the negotiations with Senator ENZI. The bill Senator SCHUMER and I introduced was much more comprehensive. But we are down to just the three things I mentioned earlier. This is a food safety issue, and it profoundly affects children's health.

But some in the industry are fighting tooth and nail to make sure BPA remains a staple in the American diet and even for children. Because of this opposition, it appears I have no option to move this amendment forward. Again, I tried for a year and a half, 7 months of negotiations. I can put a hold on the bill, stop it, and make a fuss, as some others have done over other issues, or I can wait to fight another day by allowing this food safety bill to go forward while continuing to build the case against BPA. That latter is what I intend to do beginning now.

This battle may be lost, but, rest assured, I do not intend to quit. I have a deep abiding concern regarding the presence of toxins and chemicals with no testing in all kinds of products and all kinds of solutions that build up in our bodies. There is no precautionary standard in this country when it comes to chemicals.

You have to prove that a chemical is harmful before that chemical can be banned. But the evidence against BPA is mounting and especially its harmful effects on babies and children who are still developing.

Here is the argument. Here is what BPA is. It is synthetic estrogen. It is a hormone disruptor. It interferes with how the hormones work in the body, and this chemical is used in thousands of consumer products. It is used to harden plastics, line tin cans, and even make CDs. It is even used to coat airline tickets and grocery store receipts. It is one of the most pervasive chemicals in modern life.

As with so many other chemicals in consumer products, BPA has been added to our products without knowing whether it is safe. Alternatives exist because concern has been growing about the harmful impact. The chemical industry has tried to quiet criticism by reassuring consumers that BPA is safe and that more research still needs to be done.

Well, that argument simply does not hold water. Over 200 studies show that exposure to BPA, particularly during prenatal development and early infancy, are linked to a wide range of adverse health effects in later life. Because of their smaller size and stage of development, babies and children are particularly at risk from these harmful impacts.

What do these include? Increased risk of breast and prostate cancer, genital abnormalities in males, infertility in men, sexual dysfunction, early puberty in girls, metabolic disorders such as insulin-resistant type 2 diabetes and obesity and behavioral problems such as attention deficit hyperactivity disorder, ADHD.

Industry continues to insist that BPA is not harmful. But one study shows us why we should be skeptical about research funded by the chemical industry. In 2006, the journal Environmental Research published an article comparing the results of government-funded studies on BPA to BPA studies funded by industry. The difference is stark. Ninety-two percent of the government-funded studies found that exposure to BPA caused health problems. Overwhelmingly, government studies found harm.

None of the industry studies identified health problems as a result of BPA exposure—not one. That is 92 percent of the government studies and not one of the industry studies. So I ask: How can this be? Clearly, questions are raised about the validity of the chemical industry's studies.

The results also illustrate why our Nation's regulatory agencies should not and cannot rely solely on chemical companies to conduct research into their own products. Consumers are worried about BPA. They are pushing in States for restrictions and bans. Over 75 organizations that represent almost 40 million Americans, support getting BPA out of food packaging for children.

Support comes from national groups such as the BlueGreen Alliance, Consumers Union, Breast Cancer Fund, National WIC, and United Steelworkers of America. State groups such as Alaska Community Action on Toxics, California Environmental Rights Alliance, Environment Illinois, the Tennessee Environmental Council, and the Massachusetts Breast Cancer Coalition back this amendment.

The broad coalition of environmental and consumer advocates know BPA cannot be good for our babies. I wish to underscore the importance and the urgency of withdrawing BPA from baby products.

Well-known and respected organizations and Federal agencies have expressed concern about BPA. The President's Cancer Panel Annual Report released in April of this year concluded that there is growing evidence of a link between BPA and several diseases such as cancer. The panel recommended using BPA-free containers to limit chemical exposure.

A 2008 study by the American Medical Association suggested links between exposure to BPA and diabetes, heart disease, and liver problems in humans. The National Health and Nutrition Examination Survey, NHANES, linked BPA in high concentrations to cardiovascular disease and type 2 diabetes.

In addition to the over 200 scientific studies showing exposure to BPA is linked to adverse health effects, there are a number of studies that link BPA and other environmental toxins to early onset puberty and other hormonal changes. This is serious. This emphasizes how detrimental this chemical can be during development.

I would like to discuss three of these studies. The Endocrine Society, comprised of over 14,000 members from more than 100 countries, published a scientific statement in 2009, expressing

concern for the adverse health impacts of endocrine-disrupting chemicals such as BPA. The adverse health impacts included infertility, thyroid problems, obesity, and cancer. A study published in Environmental Health Perspectives studied 715 men, ages 20 to 74 years old, and found that men who had high levels of BPA in their bodies also had higher levels of testosterone. This study demonstrates that higher BPA levels in the body are associated with altered hormone levels.

A study in the Journal of Pediatrics in September 2010 demonstrated that puberty in girls is occurring even earlier, by ages 7 and 8. The researchers studied 1,239 girls in 2004 and 2008, so there was followup, in Cincinnati, East Harlem, and San Francisco. They found that at age 8, 18 percent of Caucasian girls, 43 percent of African-American girls, and 31 percent of Hispanic girls had signs of puberty. That is at 8 years old.

The researchers suspected that environmental chemicals such as BPA could influence the onset of puberty. Early puberty can cause a host of problems later on in life, such as increased rates of breast cancer, lower self-esteem, eating disorders, and certainly depression.

Given these conclusions, it is critical we act to protect just the most vulnerable, our infants and toddlers, from this chemical.

How are children benefitted by having a baby bottle or a cup that they sip from that is coated with BPA? How is that bottle any better? How is that cup any better? Fact: It isn't. Yet the American Chemistry Council puts their need to sell these chemicals above all of the existing studies, above all the science that is emerging, and would not even say: Just in case this is true, yes; we agree with you. We should protect our young and our youngest. They would not do even that.

Our original bill was much broader. BPA is not just in plastic bottles, it is also used in the epoxy resin that lines tin cans. I no longer buy tin cans because of it. My family, I have asked them not to buy things in tin cans. Buy them in glass. Then we don't have to worry about the BPA that is in the lining of the can.

This amendment doesn't ban BPA in the lining of cans. It doesn't ban BPA in all containers. It just bans BPA in baby bottles and sippy cups, just for infants, just for toddlers. The chemical industry says no. And I guess the other side of the aisle bows.

I am amazed. BPA has been linked to developmental disorders, cancer, cardiovascular complications, and diabetes by credible scientific bodies. The evidence that BPA is unacceptably dangerous is mounting. Yet it remains in thousands of household and food products. In an effort to reach a bipartisan compromise, which we did do last night, the amendment I wanted only restricted the use of BPA in baby bottles and sippy cups because, as the science shows, babies and young children are the most susceptible to the harmful effects of this toxic chemical. This amendment would have ensured that all babies, in whatever State they happen to be or wherever they buy their baby bottles, are safe. We can't even do this in a food safety bill.

It would have ensured that parents no longer have to wonder whether the products they buy for their babies will harm them now or later in life. I have on my Blackberry a picture of a new grandchild born earlier today, a little boy by the name of Benjamin. So even if one is a grandparent like me, this is so relevant. If we can't take care of our babies, what can we take care of in this country?

Despite the loss of this amendment, the American people can still vote with their pocketbooks by refusing to buy products made with BPA. Ask the question in your grocery store. Go where they are not sold. Buy the products that do not use BPA. Public knowledge and awareness is important.

In 2008, as part of the Consumer Product Safety Improvement Act, Congress accepted my proposal to ban phthalates, and President Bush signed it. It banned phthalates, a plasticizing chemical, from children's toys. Like BPA, phthalates are linked to a variety of health problems in young children. I was proud to lead that fight and protect children from these chemicals.

I truly believe the unrestricted use of chemicals in products, whether it be makeup for women, lotions that go on bodies, coatings in cans, coverings of plastic, softeners and hardeners, chemicals that leach into food, are a problem. When we do a food safety bill, we ought to consider this. Well, not even this baby step to protect babies is going to be taken.

I very much regret it, but the battle is joined. Once I start, I do not stop. We will fight another day.

I thank the Chair and yield the floor.

EXHIBIT 1

LEADING RETAILERS & MANUFACTURERS PHASING OUT BISPHENOL A (BPA)

In response to growing scientific and public concern, over the past few years, leading U.S. retailers, baby bottle and water bottle manufacturers pledged to phase out bisphenol A (BPA) in favor of safer cost-effective alternatives. These include the following companies.

U.S. RETAILERS PHASING OUT BISPHENOL A BABY BOTTLES

CVS, Kmart, Kroger, Rite Aid, Safeway, Sears, Toys ''R'' Us and Babies ''R'' Us, Wal-Mart, Wegmans Foods, Whole Foods.

BABY BOTTLE & SIPPY CUP MANUFACTURERS PHASING OUT OR BPA FREE

Avent—offering some BPA-free alternatives, Born Free, Disney First Years, Dr. Brown's, Evenflo—offering some BPA-free alternatives, Gerber, Green to Grow, Klean Kanteen, Medela, Munchkin, Nuby Sippy cups, Playtex, Think Baby, Weil Baby.

WATER BOTTLE COMPANIES PHASING OUT BPA

ALADDIN/Pacific Market International, CamelBak,Klean Kanteen, Nalgene, Polar Bottle, Sigg.

FOOD PACKAGING COMPANIES EXPLORING BPA-FREE ALTERNATIVES

In 1999, the health foods company Eden Foods phased out the use of BPA in some of their canned foods. The company has eliminated BPA in cans for products such as beans, however they are still searching for alternatives for cans that hold tomatoes.

Gerber and Nestlé Nutrition have publicly stated they are committed to making all food and formula packaging BPA-free as soon as possible. In 2009, Abbott Labs announced that it achieved ''BPA free'' status in all of its Similac® brand powdered infant formula products and 91% of their total product line is BPA free. Nestle-Gerber announced similarly in 2008 that there is no BPA in cans used to package the Nestlé GOOD START® Supreme Milk and Soy based powdered infant formulas, which account for more than 80 percent of the type of infant formula they sell.

In 2010, General Mills Muir Glen brand announced that they would be introducing a BPA-free metal can for their organic tomatoes.

Hain Celestial and Heinz are researching and testing alternatives to BPA and plan to phase out BPA in some products. Heinz is already using a substitute to BPA in some of its can linings. In June 2010, Heinz Australia said that they expect BPA-free cans for baby food to be available within 12 months with metal closures on glass jars to follow.

Trader Joes offers BPA-free cans for their seafood (tuna, salmon, herring, sardines, etc.), chicken, turkey & beef, beans and corn.

Vital Choice transitioned to BPA-free containers for its canned seafood in 2009.

Tupperware Brand's reusable containers are 90% non-polycarbonate plastic; containers for children are all BPA-free.

CANADIAN RETAILERS PHASING OUT BPA

Home Depot Canada, Members of the Canadian Council of Grocery Distributors, Mountain Equipment Co-op, Rexall Pharmacies, Sears Canada, Wal-Mart Canada.

Mrs. FEINSTEIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. CARDIN. 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. CARDIN. Mr. President, I ask unanimous consent I be permitted to speak as in morning business.

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

SICKLE CELL DISEASE

Mr. CARDIN. Mr. President, I rise to talk about a very important health issue—sickle cell disease—that highlights the tremendous progress the scientific community has made over the years. This is a timely opportunity to bring up sickle cell disease because this month marks the 100th anniversary of its discovery.

On November 16 and 17, the National Institutes of Health will host a research symposium on sickle cell disease to commemorate the accomplishments of scientists and clinicians over the past century. The symposium, named after the scientist who discovered the gene, Dr. James B. Herrick, will bring to Maryland more than 30

experts from around the world to discuss sickle cell disease research and treatment.

Sickle cell disease is an inherited blood disorder in which red blood cells contain an abnormal type of hemoglobin and frequently take on a sickle, or crescent, shape. These defective blood cells can block small blood vessels, which can in turn lead to tissue damage or stroke. A common complication of this condition is severe pain in the limbs, chest, abdomen, and back. Other complications are anemia, jaundice, severe infection, and spleen, liver, and kidney damage.

The life expectancy for sickle cell patients is shortened, with studies reporting an average life expectancy of 42 years for males and 48 years for females. Sickle cell disease occurs most commonly in people of African descent, though individuals of Middle Eastern, Mediterranean, Central and South American, and Asian Indian heritage can inherit the disease as well. About 1 in 12 African Americans carries the gene for sickle cell disease, and 1 in 400 Americans has the full-blown disease. It is estimated that over 80,000 Americans have sickle cell disease, with about 2,000 babies born with the disease each year.

Sickle cell disease can result in tremendous personal difficulties. Natasha Thomas is a 36-year-old African-American woman from Baltimore, MD. She considers herself fortunate to have access to quality care. Despite some setbacks, she was able to complete middle school, high school, and college, and she has been working consistently for 15 years. She has had employers who have allowed her to take leave when she has had sickle cell pain crises. Natasha admits that most of the people she knows with sickle cell disease are not as fortunate as she is.

Even though she has access to specialized care, Natasha is hospitalized at least once a year with paralyzing pain from the occlusion of her blood vessels with sickle cells. In the hospital, she has to undergo IV therapy with fluids and narcotic pain medicine. Natasha is grateful for the Maryland medical assistance program, which has provided her with the necessary resources to get through difficult financial times when her condition flares up. She admits that if she did not have coverage for specialized care, she would have likely had many more pain flares and may have had to receive blood transfusions.

Sickle cell disease is not a new phenomenon. People have been living with the disease for literally thousands of years. But in the last century, there have been remarkable advancements in diagnosis and treatment of sickle cell disease.

In 1910, Dr. James B. Herrick, an attending physician at Presbyterian Hospital and professor of medicine at Rush Medical College in Chicago, published an article on the case of an anemic West Indian patient. Herrick's clinical and laboratory findings of the patient's ''peculiar elongated and sickle-shaped'' red blood corpuscles represent the first description of sickle cell disease in Western medical literature.

Since the discovery of the mutation responsible for sickle cell disease in the 1950s, there has been a rapid expansion of technological and policy advances.

In 1975, the first statewide newborn screening was established in New York.

In 1986, penicillin was found to be effective as a preventive strategy against pneumococcal infection, a particularly dangerous infection for people with sickle cell disease.

In 1995, the first effective drug treatment for adults with severe sickle cell anemia was reported in a multicenter National Heart, Lung, and Blood Institute study, including a team led by physicians from Johns Hopkins. The anticancer drug hydroxyurea was found to reduce the frequency of painful crises, and patients taking the drug needed fewer blood transfusions.

In 1996, bone marrow transplantation was discovered to improve the course of sickle cell disease for select patients. A year later, blood transfusions were found to help prevent stroke in patients.

At the turn of the millennium, the introduction of pneumococcal vaccine revolutionized the prevention of lethal infections in children and adults with sickle cell disease.

And in 2001, the first mouse model was developed demonstrating the usefulness of genetic therapy for sickle cell disease.

More recently, in 2007, scientists from the University of Alabama Birmingham and the Massachusetts Institute of Technology developed an animal model for curing sickle cell disease. These scientists used skin stem cells to reprogram the bone marrow of mice to produce normal, healthy blood cells.

I am proud to say that other scientists from Maryland have played an important role in advancing sickle cell disease research. Dr. Morton Goldberg, former head of the Wilmer Eye Institute in Baltimore, is considered the world's foremost expert in the diagnosis and treatment of eye disease due to sickle cell disease. Drs. Jim Casella and Robert Brodsky, both from Johns Hopkins, have made great strides toward preventing strokes in young children and searching for cures through stem cell transplants, respectively.

Improvements in sickle cell disease treatments have led to an increase in life expectancy from 14 years in 1973 to the mid to late 40s now. Innovation continues. As of October 2010, there were 240 ongoing or recently completed NIH-funded trials exploring better diagnosis or treatment of the disease. Under the leadership of its Director, Dr. Francis Collins, the NIH is poised to continue to push the envelope of scientific innovations toward finding a cure for sickle cell disease.

Despite all of these technological advances, sickle cell disease remains a significant problem. The annual cost of medical care for the nearly 80,000 individuals with sickle cell disease in the United States exceeds $1.1 billion. The average cost of care per month per patient is nearly $2,000. Studies show that for an average patient with sickle cell disease reaching age 45, the total health care costs are estimated to reach $950,000. What is worrisome is that additional costs associated with reduced quality of life, uncompensated care, lost productivity, and premature mortality push the costs well beyond $1 million per patient.

The enormous human and financial cost of this disease underscores the importance of finding a safe cure for sickle cell disease. A worrying finding in research is that conscious or unconscious racial bias adversely affects the availability of resources for research, delivery of care, and improvement of that care. I am particularly concerned because there is a significant gap in funding for more publicized but less prevalent diseases as compared to sickle cell disease.

This gap in funding was first addressed in 1970 by Dr. Robert Scott when he published landmark articles in the New England Journal of Medicine and the Journal of the American Medical Association. Dr. Scott's articles spurred congressional hearings that led to the passage of the first major legislation concerning sickle cell disease treatment, the National Sickle Cell Disease Control Act of 1972.

Since passage of that act, the number of research grants for sickle cell disease has risen by a factor of 10. Despite increased research dollars for sickle cell disease and major advances in treatment, important gaps still exist in the equity of Federal funding allocation and in the provision of highly qualified clinical care. The disparity in funding sickle cell disease in the private sector is even more pronounced than it is in the Federal Government.

But solely funding additional research is not enough. We need to be sure that the tools we develop for improving patients' lives are available to everyone who needs them. Unfortunately, that is not currently the case.

For example, there is a sixteenfold mortality rate difference between States with the highest and lowest death rates due to sickle cell disease. In other words, depending on where you live, you may be 16 times more likely to die from sickle cell disease in one State than another. I am proud to say that interventions such as mandatory newborn screening developed by Dr. Susan Panny at the Maryland Department of Health and Mental Hygiene have helped Maryland attain the lowest child mortality rate due to sickle cell disease in the Nation, with 1/10 the number of deaths compared to the national average.

Earlier, I mentioned Natasha Thomas. She is fortunate to have access to specialized treatment centers and rarely gets hospitalized for pain crises.

She's been able to maintain a job and says that she has a pretty good quality of life. She is a testament to the benefits of having access to necessary treatments in Baltimore.

Natasha has a friend who is not so lucky. He wished to remain anonymous. Natasha's friend can't keep a job because he is frequently absent from work due to hospitalizations from pain crises.

His condition is poorly controlled because he does not have access to specialized care as does Natasha. Like so many others with sickle cell disease, he is in catastrophic debt from medical bills due to his condition. The difference between Natasha and her friend does not have to be a matter of luck. High quality treatments for sickle cell disease exist. We just need to make sure they are available to everyone that requires them.

Besides our moral obligation to ensure that patients receive appropriate care, there is also an economic argument. Research showing the high proportion of sickle cell disease costs associated with inpatient hospitalization suggest that interventions that reduce complications such as pain crises could be cost-saving.

We have made significant progress toward broadening coverage for all Americans. But the U.S. Department of Health and Human Services must ensure that the implementation of health policy as it pertains to sickle cell disease is done with emphasis on high-quality, equitable care. We need to make sure the standard of care is available to all and that the guidelines permeate throughout the specialty and primary care centers caring for patients with sickle cell disease.

We need to make sure that patients like Natasha's friend can get the care they need. After all, of the nearly $112 billion spent annually on hospitalization for sickle cell disease, a significant portion can be reduced by lowering the complications resulting from hospitalization if excellent care is uniformly provided.

With the recent codification of the Office of Minority Health at the Department of Health and Human Services, we can ensure that our investment in producing new knowledge is balanced by a similarly robust commitment to universal and equitable diffusion of this knowledge. This way, all patients will reap the full benefit of our investment in research. In addition to sickle cell disease, the Office of Minority Health will help us address many other issues pertaining to health disparities.

Health disparities in our health care delivery system are a huge issue. Health disparities are differences in health among social, economic, and racial or ethnic lines. Many disparities exist in our country. Let's look at disparity through the lens of life expectancy.

The life expectancy for African Americans is 5.3 years lower than Whites. Education also affects life expectancy. Individuals with college education can expect to live on average 6 years longer than people who have never graduated from high school. The life expectancy of people over 400 percent of the Federal poverty level is on average 7 years longer than those at or below the Federal poverty level.

These differences are stark, and we need to have a strategy to deal with them. We need to know how we can reach out to the minority communities to deal with their special needs. In addition to codifying the Office of Minority Health, the recently enacted health care reform bill supports a network of minority health offices located within HHS, and it elevated the National Center on Minority Health and Health Disparities at NIH from a center to an institute. The Offices of Minority Health will be essential for addressing health disparities in America by monitoring health status, health care trends, and quality of care among minority patients and evaluating the success of minority health programs and initiatives.

Over the next year I plan to return to the Senate floor to highlight how we as a nation and the Office of Minority Health in particular can tackle health disparities. Through a series of presentations, I hope to raise awareness about the major health disparity issues in our country, and I hope to direct our attention to the proper implementation of the Affordable Care Act so the full potential of this legislation can be realized.

I am proud of the progress we have made with the health care reform legislation. I am proud of the creation of the Office of Minority Health, and on this 100th anniversary of the discovery of sickle cell disease, I commend the scientific and medical communities for their contributions to diagnosis and treatment of this important condition.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak as in morning business for perhaps 15 minutes.

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

CYBER SECURITY

Mr. WHITEHOUSE. Mr. President, I come to the floor to speak about the legislation that will be required in order to bolster our Nation's cyber defenses and to protect our Nation's intellectual property from piracy and from theft.

In the course of my work on the Intelligence and Judiciary Committees, it has become all too clear that our laws have not kept pace with the amazing technological developments we have seen, many information technologies over the past 15 or 20 years. Earlier this year, I had the privilege of chairing the Intelligence Committee's bipartisan cyber task force, along with my distinguished colleagues, Senator SNOWE and Senator MIKULSKI, who made vital contributions and were great teammates in that effort. We spent 6 months conducting a thorough review of the threat and the posture of the United States for countering it.

Based on that review and my work on the Senate Judiciary Committee, I have identified six areas in which there are overarching problems with the current statutory framework for protecting our country. The first is a really basic one; that is, that current law does not adequately facilitate or encourage public awareness about cyber threats. The government keeps the damage we are sustaining from cyber attacks secret because it is classified. The private sector keeps the damage they are sustaining from cyber attacks secret so as not to look bad to customers, to regulators, and to investors. The net result of that is that the American public gets left in the dark.

We do not even have a good public understanding of how extensive and sophisticated the cyber forces arrayed against America are. Between the efforts of foreign governments and international organized crime, we are a long way from the problem of hackers in the basement. It is a big operation that has been mounted against us, and I would like to be able to describe it more fully, but it is both unhelpfully and unnecessarily classified, and so I can't even talk about that.

Americans are sadly uninformed about the extent of the risk and the extent of the capacity that is being used against us. If Americans understood the threat and the vital role they themselves can play in protecting themselves and the country, I think we would all be more likely to engage in the cyber equivalent of routine maintenance. People would understand and they would support legislative changes which we need to protect our intellectual property and our national infrastructure.

One of the principal findings of our cyber task force was that most cyber threats—literally the vast majority of cyber threats—can be countered readily if Americans simply allowed automatic updates to their computer software, ran up-to-date antivirus programs, and exercised reasonable vigilance when surfing the Web and opening e-mails. So we need far more reporting from the government and the private sector to let Americans know what is happening out there on the wild Web. Disclosures can be anonymized, where necessary, to safeguard national security or protect competitive business interests. But

basic facts, putting Americans on notice of the extent of the present danger and harm, need to be disclosed.

Second, we need, beyond just public information, to create a structure of rights and responsibilities where the public, consumers, technology companies, software manufacturers, and Internet service providers are all able to take appropriate roles for us to maintain those basic levels of cyber security. The notion that the Internet is an open highway with toll takers who have no responsibility for what comes down the highway, no responsibility no matter how menacing, no responsibility no matter how piratical, no responsibility no matter how dangerous can no longer be valid. We protect each other on our physical highways with basic rules of the road and we need a similar code for the information highway.

Australia's ISPs have negotiated a cyber security code of conduct, and ISPs in compliance with the code can display a trust mark. That is one idea worth exploring. But one way or the other, there needs to be a code of conduct for safe travel on the information highway just as there is on our geographic highways.

Third, we need to better empower our private sector to defend itself. When an industry comes together against cyber attackers to circle the wagons, to share information, and to engage in a common defense against those cyber attackers, we should help and not hinder that private sector effort. Legal barriers to broader information sharing among private sector entities and between the private sector and government must be lowered. I believe we can encourage cyber security in this way—common defense within the private sector—without undermining other areas of public policy. But it is not going to be a simple task, and we will have to work our way through it because those other areas of public policy are serious areas—antitrust protection, the safeguarding of intellectual property, protecting legal privileges, liability concerns, and even national security concerns in those areas where the government may be asked to share classified information.

Bear in mind that there are three levels of threat. As I have said, the vast majority of our cyber vulnerabilities can be cured by simple patches and off-the-shelf technology. That is the lowest level—just follow basic, simple procedures and we can rid ourselves of most of the attacking. The next is a more sophisticated set of threats that require the best efforts of the private sector to defend against. Those private sector efforts are becoming increasingly sophisticated and capable. As to those types of attacks, the private sector can handle them alone and particularly so if we have empowered the private sector, industry by industry, to engage in more effective common defense and information sharing. The most sophisticated threats and attacks, however, will require action by our government. The notion that we can leave our Nation's cyber defense entirely to the private sector is no longer valid.

This brings us to a fourth question—the increasingly important issue of cyber 911. When the CIO of a local bank or electric utility is overwhelmed by a cyber attack, whom do they call and under what terms does the government respond? Right now, the answers to those questions are dangerously vague. The Electronic Communications Privacy Act—or ECPA—is a vitally important statute. In 1986, 25 years ago, Chairman PATRICK LEAHY worked hard to establish statutory privacy protections in a domain where constitutional privacy protections were weak.

It is an enduring legislative accomplishment and we must preserve its core principles. Since ECPA was enacted, however, the threat has dramatically changed. Imagine how technology has changed in 25 years. It is no longer true that private firms are capable of defending their networks from sophisticated thieves and spies on their own.

As we found in the Cyber Task Force, there is now a subset of threats that cannot be countered without bringing to bear the U.S. Government's unique authorities and capabilities. There always needs to be strong privacy protections for Americans against the government. But we do let firemen into our house when it is on fire and the police can come into our house when there is a burglar. A similar principle should apply to criminals and cyber attacks when private capabilities are overwhelmed.

There is one more step, and here is where it gets a little bit more tricky. You call 9–1–1 and the police or the ambulance rushes right over. But in cyber security, by the time you call cyber 9–1–1, it may be too late. Attacks in cyberspace happen at light speed, as fast as electrons flow. Not all the risks and harms that imperil Americans can be averted by action after the fact. Some attacks are actually already there, in our networks, lying in wait for the signal to activate.

We as a country are naked and vulnerable to some forms of attack if we have not predeployed our defenses. Because the viruses and cyber attack nodes can travel in the text portion of messages, we have to sort out a difficult question: whether, and if so how and when, the government can scan for dangerous viruses and attack signals.

In medieval times, communities protected their core infrastructure from raiders by locating the well, the granary, and the treasury inside castle walls. Not everything needs the same level of protection in cyberspace, but we need to sort out what does need that kind of protection, what the castle walls should look like, who gets allowed to reside inside the walls, and what the rules are.

That leads to the question of a dot-secure domain. I have mentioned this before, but I would like to highlight it as an option for improving cyber security, particularly of the critical infrastructure of our country.

Recently, General Alexander, Director of the NSA and commander of U.S. Cyber Command, has echoed this as a possibility. His predecessor at NSA, and a former Director of National Intelligence, Admiral McConnell, is also an advocate of such a domain for critical infrastructure. This doesn't have to be complicated or even mandatory. The most important value of a dot-secure domain is that, like dot-gov and dot-mil, now we can satisfy consent under the fourth amendment search requirements for the government's defenses to do their work within that domain, their work of screening for attack signals, botnets, and viruses. Critical infrastructure sites could bid for permission to protect themselves with the dot-secure domain label and be allowed in if they could show that lives and safety for Americans would be protected by allowing them entry. Obviously, core elements of our electric grid, of our financial, transportation, and communications infrastructure would be obvious candidates. But we simply cannot leave that core infrastructure on which the life and death of Americans depends without better security.

Fifth, we must significantly strengthen law enforcement against cyber crooks. There is simply no better deterrent against cyber crime than a prospect of a long stretch in prison. We need to put more cyber crooks behind bars. It is not for want of ingenuity and commitment by our professionals that there are not more cyber crooks behind bars.

During my work on the Cyber Task Force, I received a number of briefings and intelligence reports on cyber crime. The FBI and the Department of Justice have some real success stories under their belts, such as the arrests of the alleged perpetrators behind the Mariposa botnet this summer, and our agencies are beginning to work together better and better over the lines of turf defense that separate them.

The problem is, the criminals are also ingenious and they are greedy and they are successful and they are astoundingly well funded. Again, we are not talking about hackers in the basement. We are talking about substantial criminal enterprise with enormous sums of money at their disposal and at stake.

Many enterprises appear to work hand-in-hand with foreign governments, which puts even greater assets for attack at their disposal. They have a big advantage. The architecture of the Internet favors offense over defense. Technologically, it is generally easier for savvy criminals to attack a network and to hide their trail than it is for savvy defenders to block an attack and trace it back to the criminals. We are not on a level playing field against cyber criminals. That is the

problem not easily overcome. What we can overcome, however, are the gaps, the weaknesses, the outdated strategies, and the inadequate resources in our own legal investigative processes.

One example: the most dangerous cyber criminals are usually located overseas. To identify, investigate, and ultimately prosecute those criminals under traditional law enforcement authorities, we have to rely on complex and cumbersome international processes and treaties established decades ago that are far too slow for the modern cyber crime environment.

We also need to resource and focus criminal investigation and prosecution at a level commensurate with the fact that we, America, are now on the losing end of what is probably the biggest transfer of wealth through theft and piracy in human history.

I will say that again: We are at the losing end of what is probably the biggest transfer of wealth through theft and piracy in human history.

I am pleased that in fiscal year 2010 the FBI received an additional 260 cyber security analysis and investigative positions. DOJ's Computer Crimes and Intellectual Property Section has not received new resources in 5 years. With the FBI poised to ramp up its investigatory actions against our cyber adversaries, I am concerned the DOJ may not have the resources to keep up.

Sixth, we need clear rules of engagement for our government to deal with foreign threats. That is, unfortunately, a discussion for another day since so much of this area is now deeply classified. But here is one example: Can we adapt traditional doctrines of deterrence to cyber attacks when we may not know for sure which country or nonstate actor carried out the attack? If we can't attribute, how can we deter?

With respect to any policy of deterrence, how can it stand on rules of engagement that the attacker does not know of? Not only do we need to establish clear rules of engagement, we need to establish and disclose clear rules of engagement if any policy of deterrence is to be effective in cyberspace.

Finally, as we go about these six tasks, the government must be as transparent as possible with the American people. I doubt very much that the Obama administration would abuse new authorities in cyberspace to violate Americans' civil liberties. But on principle, I firmly and strongly believe that maximum transparency to the public and rigorous congressional oversight are essential. We have to go about this right.

I look forward to working with my Senate colleagues and with the administration as the Congress moves toward comprehensive cyber security legislation to protect our country before a great cyber attack should befall us.

Let me close my remarks by saying the most somber question we need to face is resilience.

First, resilience of governance: How could we maintain command and control, run 9–1–1, operate FEMA, deploy local police and fire services, and activate and direct the National Guard if all of our systems are down?

Second, resilience of society: How do we make sure people have confidence during a prolonged attack that food, water, warmth, and shelter will remain available? Because the Internet supports so many interdependent systems, a massive or prolonged attack could cascade across sectors, compromising or taking over our communications systems, our financial systems, our utility grid, and the transportation and delivery of the basic necessities of American life.

Third, our American resilience as individuals: Think about it. Your power is out and has been for a week. Your phone is silent. Your laptop is dark. You have no access to your bank account. No store is accepting credit cards. Indeed, the corner store has closed its doors and the owner is sitting inside with a shotgun to protect against looters. Gasoline supply is rationed with National Guard soldiers keeping order at the pumps. Your children are cold and hungry and scared. How, then, do you behave?

I leave this last question, our resilience as a government, as a society, and as individuals to another day. But I mention it to highlight the potentially catastrophic nature of a concerted and prolonged cyber attack. Again, such an attack could cascade across multiple sectors and could interrupt all of the different necessities on which we rely.

When your power is down, it is an inconvenience but you can usually call somebody on the phone. Now the phone is out, so you can go to the laptop and try to e-mail somebody, but there is no signal on the laptop. You need cash. You go to the ATM. It is down. The bank is not open because a run would take place against its cash assets, given the fact that it can no longer reliably electronically let its customers know what their bank account balances are.

We are up against a very significant threat. I hope some of the guideposts I have laid out will be helpful in designing the necessary legislation we need to put in place to empower our country to successfully defend against these sorts of attacks.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest called the roll.

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

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

MORNING BUSINESS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO ROBERT FORBUSS

Mr. REID. Mr. President, I rise today to honor Mr. Robert ''Bob'' Forbuss for his service to the people of Nevada. Tomorrow evening, at its Annual Convention and Tradeshow in Las Vegas, the American Ambulance Association will honor Mr. Forbuss for his many years of work on behalf of ambulance services in Nevada and throughout the Nation. Today I am happy to call the attention of the Senate to the selfless service that my good friend has rendered to the State of Nevada.

Bob is a native Nevadan who has served this community for nearly four decades as an educator, elected official, businessman, and community advocate. After earning his degrees in political science and public administration from Long Beach State University, Bob returned to Las Vegas and began his professional career as a teacher at Bishop Gorman High School from 1972–1979. He then served on the Clark County School Board of Trustees for 8 years and was an influential advocate for education initiatives in Southern Nevada. For his many years of service to education in Nevada, Bob was eventually honored by the Clark County School District in the naming of the Robert L. Forbuss Elementary School. It is fitting that such a fine educator will forever have his name stamped on the hearts of the students that attend Forbuss Elementary School.

During his tenure at Bishop Gorman, Bob became an emergency medical technician, EMT, and worked during his summer breaks for Mercy Medical Services. He quickly worked his way through the managerial ranks of Mercy and eventually became an owner of the company. Mercy soon became a flagship and model operation in the United States for paramedic services and Bob became a recognized leader in EMS Services, winning numerous awards and becoming a popular speaker at national conferences.

One of his greatest achievements, and the one for which he is being recognized tomorrow evening, has been his work on behalf of the American Ambulance Association, AAA. The AAA was formed in response to the need for improvements in medical transportation and emergency medical services. Bob was an original founder of the AAA, and he later served as the organization's president. I have no doubt that throughout his presidency, and the subsequent years of service that followed, he has labored diligently to ensure that our Nation's ambulatory systems have the resources they need to serve our families, friends, and communities.

Today, I express my sincere thanks to my dear friend for the noble work that he has performed over the years.