with disabilities from participating fully in our economy. Not just because it is the right thing to do, but because it is the smart thing to do.

I want to make one final point. I mentioned that the Americans with Disabilities Act is part of a tradition of important civil rights achievements. But there is one fundamental way in which the ADA differs from some of those other milestone laws.

The Civil Rights Act was enacted primarily to combat legal, institutionalized racism against African Americans. Title IX of the education amendments of 1972 was passed to prevent discrimination against women and girls in education. Those laws and others protect people from discrimination based on certain fundamental, unchangeable characteristics. If you are not born black, you are not going to become black. But any of us can become disabled—in an instant.

Today, you may think the ADA is for other people and other families, but you may think differently by the time we celebrate the 16th anniversary of the ADA a year from now. In fact, one in three 20-year-olds today will become disabled before the reach retirement age.

This past year, I have had the privilege of getting to know an extraordinary American who became disabled doing her job. Her name is Tammy Duckworth. She is major in the U.S. Army National Guard. Her job was piloting a Black Hawk helicopter in Iraq. Last November, just before Thanksgiving, her Black Hawk was shot down by a rocket-propelled grenade and she lost both of her legs. Although now a double amputee, she is determined to both walk and fly helicopters again.

Thanks to advances in medicine, we are able to save more people who—15 years ago—would not have survived a car crash, or bone cancer, or even military combat. Thank goodness for that.

As we celebrate the 15th anniversary of the Americans with Disabilities Act, I hope we will commit ourselves as a Nation to work to close the gap between our medical abilities, and our mental attitudes. Let us agree that men and women like Tammy Duckworth, who suffered permanent disabilities, will not be forced to fight in this country for basic rights and gainful employment that is worthy of their skills and talents. Let us commit to work across party lines—as Congress did when it passed the Americans with Disabilities Act 15 years ago—to fulfill not just the letter but the spirit of this important law.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. McCONNELL. Mr. President, I welcome everyone back for the remaining time of this work period. This will be the last week before the August recess, we expect.

It will be a busy week. Today we begin with a resolution regarding the anniversary of the ADA, the Americans with Disabilities Act, which Senator HARKIN was just discussing. We will be voting on the adoption of that resolution at 5:30 p.m. today.

Also, we resume debate on the Defense authorization bill. As a reminder, a cloture motion was filed on the Defense bill, and under the consent agreement all first-degree amendments should be filed at the desk no later than 2 p.m. today.

Tomorrow we will have a very busy morning. Under the agreement reached last week, we have a series of votes lined up for Tuesday morning. There could be as many as five votes starting early tomorrow morning, and Senators should adjust their schedules to be on or close to the floor tomorrow morning.

Having said that, this will certainly, as I indicated earlier, be a busy week as we consider the Defense authorization bill, the gun manufacturers liability bill, as well as a number of conference reports that may become available during the week. We certainly hope they will become available. With the cooperation of all Senators, we can finish our work in a timely way and adjourn at the end of the week.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WARNER. Mr. President, will the Chair advise the Senate as to the pending business?

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1042, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1042) to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Pending:

Frist modified amendment No. 1342, to support certain youth organizations, including the Boy Scouts of America and Girl Scouts of America.

Inhofe amendment No. 1311, to protect the economic and energy security of the United States.

Inhofe-Collins amendment No. 1312, to express the sense of Congress that the President should take immediate steps to establish a plan to implement the recommendations of the 2004 Report to Congress of the United States-China Economic and Security Review Commission.

Inhofe-Kyl amendment No. 1313, to require an annual report on the use of United States funds with respect to the activities and management of the International Committee of the Red Cross.

Lautenberg amendment No. 1351, to stop corporations from financing terrorism.

Ensign amendment No. 1374, to require a report on the use of riot control agents.

Ensign amendment No. 1375, to require a report on the costs incurred by the Department of Defense in implementing or supporting resolutions of the United Nations Security Council.

Collins amendment No. 1377 (to amendment No. 1351), to ensure that certain persons do not evade or avoid the prohibition imposed under the International Emergency Economic Powers Act.

Durbin amendment No. 1379, to require certain dietary supplement manufacturers to report certain serious adverse events.

Hutchison-Nelson of Florida amendment No. 1357, to express the sense of the Senate with regard to manned space flight.

Thune amendment No. 1389, to postpone the 2005 round of defense base closure and realignment.

Kennedy amendment No. 1415, to transfer funds authorized to be appropriated to the Department of Energy for the National Nuclear Security Administration for weapons activities and available for the robust nuclear earth penetrator to the Army National Guard, Washington, District of Columbia, chapter.

Allard-McConnell amendment No. 1418, to require life cycle cost estimates for the destruction of lethal chemical munitions under the Assembled Chemical Weapons Alternatives program.

Allard-Salazar amendment No. 1419, to authorize a program to provide health, medical, and life insurance benefits to workers at the Rocky Flats Environmental Technology Site, Colorado, who would otherwise fail to qualify for such benefits because of an early physical completion date.

Dorgan amendment No. 1426, to express the sense of the Senate on the declassification and release to the public of certain portions of the Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001, and to urge the President to release information regarding sources of foreign support for the hijackers involved in the terrorist attacks of September 11, 2001.

Dorgan amendment No. 1429, to establish a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism.

Salazar amendment No. 1421, to rename the death gratuity payable for deaths of members of the Armed Forces as fallen hero compensation.

Salazar amendment No. 1422, to provide that certain local educational agencies shall be eligible to receive a fiscal year 2005 payment under section 8002 or 8003 of the Elementary and Secondary Education Act of 1965.

Salazar-Reed amendment No. 1423, to provide for Department of Defense support of certain Paralympic sporting events.

Mr. WARNER. Mr. President, I am very pleased the Senate has turned to this important legislation. It was first brought up Wednesday night with activity on Thursday and again on Friday. I thank all those who participated.

I am reminded that at 2 o'clock today, all first-degree amendments need to be filed in view of the pending cloture motion. This is a motion which the distinguished leader, Mr. FRIST, and I will discuss, together with others. It ripens tomorrow morning. So as a protection, I ask Senators to consider their own interests in the context that it could be ripened, but that decision has not yet been made.

At this time, even though the distinguished ranking member is not with me, there is a matter by the Senator from Maine about which I hope she will find the opportunity at this time to address the Senate. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

AMENDMENTS NOS. 1489, 1490, AND 1491, EN BLOC

Ms. COLLINS. Mr. President, I thank the distinguished chairman of the committee for his courtesy. I ask that the pending amendment be set aside, and on behalf of the Senator from South Dakota, Mr. THUNE, I call up three amendments that are at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report the amendments en bloc.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. THUNE, proposes amendments numbers 1489, 1490, and 1491, en bloc.

The amendments are as follows:

AMENDMENT NO. 1489

(Purpose: To postpone the 2005 round of defense base closure and realignment)

On page 371, between lines 8 and 9, insert the following:

SEC. 2887. POSTPONEMENT OF 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.

The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended—

(1) by adding at the end the following:

"SEC. 2915. POSTPONEMENT OF 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.

"(a) IN GENERAL.—Notwithstanding any other provision of this part, the round of defense base closure and realignment otherwise scheduled to occur under this part in 2005 by reasons of sections 2912, 2913, and 2914 shall occur instead in the year following the year in which the last of the actions described in subsection (b) occurs (in this section referred to as the 'postponed closure round year').

"(b) ACTIONS REQUIRED BEFORE BASE CLOSURE ROUND.—(1) The actions referred to in subsection (a) are the following actions:

"(A) The complete analysis, consideration, and, where appropriate, implementation by the Secretary of Defense of the recommendations of the Commission on Review of Overseas Military Facility Structure of the United States.

"(B) The return from deployment in the Iraq theater of operations of substantially all (as determined by the Secretary of Defense) major combat units and assets of the Armed Forces.

"(C) The receipt by the Committees on Armed Services of the Senate and the House of Representatives of the report on the quadrennial defense review required to be submitted in 2006 by the Secretary of Defense under section 118(d) of title 10, United States Code.

"(D) The complete development and implementation by the Secretary of Defense and the Secretary of Homeland Security of the National Maritime Security Strategy.

"(E) The complete development and implementation by the Secretary of Defense of the Homeland Defense and Civil Support directive.

"(F) The receipt by the Committees on Armed Services of the Senate and the House of Representatives of a report submitted by the Secretary of Defense that assesses military installation needs taking into account—

"(i) relevant factors identified through the recommendations of the Commission on Review of Overseas Military Facility Structure of the United States;

"(ii) the return of the major combat units and assets described in subparagraph (B);

"(iii) relevant factors identified in the report on the 2005 quadrennial defense review;

"(iv) the National Maritime Security Strategy; and

"(v) the Homeland Defense and Civil Support directive.

"(2) The report required under subparagraph (F) of paragraph (1) shall be submitted not later than one year after the occurrence of the last action described in subparagraphs (A) through (E) of such paragraph.

"(c) ADMINISTRATION.—For purposes of sections 2912, 2913, and 2914, each date in a year that is specified in such sections shall be deemed to be the same date in the postponed closure round year, and each reference to a fiscal year in such sections shall be deemed to be a reference to the fiscal year that is the number of years after the original fiscal year that is equal to the number of years that the postponed closure round year is after 2005."; and

(2) in section 2904(b)—

(A) in the heading, by striking "CONGRESSIONAL DISAPPROVAL" and inserting "CONGRESSIONAL ACTION";

(B) in paragraph (1)—

(i) in subparagraph (A), by striking "the date on which the President transmits such report" and inserting "the date by which the President is required to transmit such report"; and

(ii) in subparagraph (B), by striking "such report is transmitted" and inserting "such report is required to be transmitted";

(C) by redesignating paragraph (2) as paragraph (3);

(D) by inserting after paragraph (1) the following new paragraph:

"(2) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a recommendation for such closure or realignment is specified as disapproved by Congress in a joint resolution partially disapproving the recommendations of the Commission that is enacted before the earlier of—

"(A) the end of the 45-day period beginning on the date by which the President is required to transmit such report; or

"(B) the adjournment of Congress sine die for the session during which such report is required to be transmitted."; and

(E) in paragraph (3), as redsignated by subparagraph (C), by striking "paragraph (1)" and inserting "paragraphs (1) and (2)".

AMENDMENT NO. 1490

(Purpose: To require the Secretary of the Air Force to develop and implement a national space radar system capable of employing at least two frequencies)

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

SEC. 912. NATIONAL SPACE RADAR SYSTEM.

The Secretary of the Air Force shall proceed with the development and implementation of a national space radar system that employs at least two frequencies.

AMENDMENT NO. 1491

(Purpose: To prevent retaliation against a member of the Armed Forces for providing testimony about the military value of a military installation)

On page 371, between lines 8 and 9, insert the following:

SEC. 2887. TESTIMONY BY MEMBERS OF THE ARMED FORCES IN CONNECTION WITH THE 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the Secretary of Defense should permit any member of the Armed Forces to provide to the Defense Base Closure and Realignment Commission testimony on the military value of a military installation inside the United States for purposes of the consideration by the Commission of the Secretary's recommendations for the 2005 round of defense base closure and realignment under section 2914(d) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(b) PROTECTION AGAINST RETALIATION.—No member of the Armed Forces may be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because such member provided or caused to be provided testimony under subsection (a).

Ms. COLLINS. Mr. President, I ask unanimous consent that the amendments now be set aside.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. COLLINS. I thank the Chair.

Mr. WARNER. Mr. President, before my distinguished colleague leaves the floor, she had the courtesy, as she always does, to show me the amendments. One of them relates to BRAC. The distinguished Senator from South Dakota offered a BRAC amendment the other night. I glanced at this one. It seems to be similar in form, but I have not had a chance to examine it.

The purpose of my colloquy with the Senator would be to encourage Senators who are concerned about the important issues on BRAC to take note that we had an extensive colloquy between myself and the distinguished Senator from South Dakota, with the Senator from Michigan, the ranking member joining in, the other evening on the subject. I hope that other Senators who may be cosponsors or otherwise interested in this issue will find the opportunity to examine the original amendment and this amendment and that we hopefully today can have a continuation of this important debate on the issues relating to BRAC which are of great concern to a number of colleagues.

Ms. COLLINS. Mr. President, I would accept the comments of the distinguished chairman of the committee. This is a very important issue to many of us. I understand the chairman and the ranking member did debate this issue at some length last week. I am sure the chairman is correct in saying we would all benefit from reading that colloquy as we prepare to debate these issues further and ultimately cast our votes.

Mr. WARNER. I thank my distinguished colleague. I do bring to the attention of colleagues that today is a

good opportunity for debate such that we can have a vote on it as quickly as the proposers and others think it is appropriate.

Ms. COLLINS. Mr. President, I yield the floor.

Mr. WARNER. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1492

Mr. REED. Mr. President, I call up an amendment that Senator LEVIN has offered, which is at the desk.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for Mr. LEVIN, for himself, and Mr. REED proposes an amendment numbered 1492.

Mr. REED. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To make available, with an offset, an additional $50,000,000 for Operation and Maintenance for Cooperative Threat Reduction)

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

SEC. 330. ADDITIONAL AMOUNT FOR COOPERATIVE THREAT REDUCTION PROGRAMS.

(a) INCREASED AMOUNT FOR OPERATION AND MAINTENANCE, COOPERATIVE THREAT REDUCTION PROGRAMS.—The amount authorized to be appropriated by section 301(19) for the Cooperative Threat Reduction programs is hereby increased by $50,000,000.

(b) OFFSET.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby reduced by $50,000,000, with the amount of the reduction to be allocated as follows:

(1) The amount available in Program Element 0603882C for long lead procurement of Ground-Based Interceptors is hereby reduced by $30,000,000.

(2) The amount available for initial construction of associated silos is hereby reduced by $20,000,000.

Mr. REED. Mr. President, this amendment was offered by Senator LEVIN and myself would do several very critical and important things. First, the amendment would increase funding for the Cooperative Threat Reduction Program by $50 million. The offset would be twofold: $30 million would be taken from the long lead procurement of ground-based interceptors as part of the National Missile Defense Program and another $20 million would be taken from the funding for initial construction for silos to house these interceptors.

Essentially what Senator LEVIN is doing with this provision is to recognize the fact that a more immediate threat to the United States rests with literally thousands of locations where nuclear material might be housed from the breakup of the old Soviet Union, and other locations that need attention with respect to the reduction of these materials. I believe the greatest threat we face in this country is the fact that—hopefully not, but the situation where a terrorist might gain control of these materials, bring them into this country and use them with devastating effect.

So this amendment recognizes the most immediate threat comes from these materials and therefore is putting additional resources from the National Missile Defense Program, modest changes, to approach this major effort with respect to cooperative threat reduction.

The funds would come from our ground-based midcourse defense system. The interceptors and silos where the offsets occur are now currently being deployed at Fort Greely, AK, and Vandenberg Air Force Base in California. Because of recent developments, we have an opportunity to address the critical issue of loose nukes by transferring these funds. I would argue this is a most worthy cause. The offset will not affect the missile defense system at all. In fact, as we understand it, in the last several months the missile defense system has been reevaluating itself, looking at whether the technical issues are challenging, in fact, and have not conducted tests as they thought they could over the last several months. So I think now is the opportune time to put more resources in cooperative threat reduction.

We are all aware, as I have mentioned before, that the greatest threat to us today is the possibility that terrorists will acquire nuclear weapons or nuclear material and use it with devastating effect against us. Of course, one country with enormous amounts of this nuclear material is Russia.

It is estimated that Russia has approximately 16,000 nuclear weapons stored at between 150 and 210 sites. While that is a significant reduction from the 40,000 weapons at the end of the Cold War, it is still a huge number of weapons and also a large number of storage sites.

Indeed, there is some imprecision about where all the sites might be. Of course, we have also heard reports of potential sites for, if not nuclear material, other dangerous material in former components of the Soviet Union, the newly independent states. So this is a challenging issue we have to face.

Only about 25 percent of the total number of weapons sites have received any upgrades in the past five years. Many of them still lack adequate security and safeguards. At the rate planned for in the fiscal year 2006 budget request, it would be around 2011 or 2012 before the work at only a portion of the sites would be completed to bring them up to levels of security and safety that we would feel confident this nuclear material would not be stolen, misplaced or somehow find itself in the world community.

The Defense Department only expected work to be scheduled on one or two sites in fiscal year 2006 so they budgeted approximately $60 million in the process. But then in February, when President Bush and President Putin met at the summit in Bratislava, Slovakia, the two agreed on a way to address security upgrades at 15 key nuclear weapons sites. With this agreement, we have the opportunity to accomplish in 2 years what we thought would take 10.

The issue, of course, is funding. The total cost of these upgrades is approximately $350 million. With this amendment, we are adding $50 million to this project, which is not the total needed but will allow for a good start. Again, this is a huge breakthrough that occurred after the President's budget submission. It is a major opportunity we simply must take advantage of.

As I have indicated before, the proposal of Senator LEVIN is to move this $50 million into cooperative threat reduction from the National Missile Defense Program. I think it is useful to look at this program to indicate where these transfers are possible, available, and even desirable.

When President Bush first took office in 2001, he made missile defense one of his highest priorities. In May 2000, President Bush said America must build effective missile defense based on the best available options at the earliest possible date. Missile defense must be designed to protect all 50 States, our friends, allies, and deployed forces overseas from missile attacks by rogue nations or accidental launches. President Bush's first major action was to significantly increase funding for missile defense.

Since fiscal year 2002, approximately $45 billion, including fiscal year 2006 requests, has been provided for missile defense. That is $45 billion and here we are talking about a transfer of $50 million from that huge program. This amount is half of what has been spent on missile defense since President Reagan launched the Strategic Defense Initiative in 1984. We have seen a huge acceleration of funding with respect to missile defense. Another aspect of President Bush's plan for missile defense was that the systems would be developed and acquired under an approach called spiral development. As the Congressional Research Service succinctly summarizes: A major consequence of the administration's proposed evolutionary acquisition strategy is that the Missile Defense Program would not feature the familiar phases and milestones of the traditional DOD acquisition system. Another consequence is the Missile Defense Agency cannot provide Congress with a description of its final missile defense architecture, the capabilities

on any near or longer term system, the specific dates by which most elements of the emerging architecture are to be tested and deployed, or an estimate of the eventual costs of the Missile Defense Program.

So President Bush's plan was to spend an enormous amount of money in a short period of time with little plan and no traditional checks and balances with respect to traditional procurement programs.

This program has, in fact, come under self-generated pressures. Tests that were proposed to be conducted over the last several months have been postponed and cancelled. There is a hard relook at the technology. There is potential here, but certainly there is not the kind of progress that would justify the robust spending to date and certainly not indicate that they need an additional $50 million to keep doing what they are doing.

In the past, we have looked very carefully at this program of national defense. Like so many others, I believe if we can produce—and I think we can ultimately—a workable system to protect this country, protect its allies, our troops in the field, we have to do that, but we have to do it with deliberate speed, and I would emphasize deliberate speed, not all-out haste, which generally means waste.

I believe we should pursue this system, but I also believe we should take the time to determine that the technology, which is extraordinarily complex, is mature and effective. So beginning in 2002, I offered amendments which I felt would improve the Missile Defense Program. In the fiscal year 2003 bill, I introduced an amendment requiring a report on flight testing of the ground-based midcourse defense, or the GMD, system. In fiscal year 2004, I offered an amendment which would direct that the Missile Defense Agency provide information on procurement, performance criteria, and operational test plans for ballistic missile defense programs. In fiscal year 2005, I introduced an amendment requiring operationally realistic testing and independent evaluation of the ballistic missile defense system.

All of these amendments were modified by the majority. Then they were passed. Indeed, it is unclear if they were not modified whether they would have passed.

Furthermore, when the Missile Defense Agency met these requirements, in many instances details and quality of reporting were lacking. For the most part, the Missile Defense Agency has been doing what it wants to do with very little detailed supervision by the Congress and it has led to a situation now where the program is being seriously looked at. We certainly have not made the kind of technological breakthrough which was anticipated. One thing is certain, we have spent a great deal of money in this pursuit.

Now, where we are today, interceptor tests are the critical tests which involve a real missile defense interceptor hitting a real target missile. These tests are the only means to truly assess whether a missile defense system has the chance of working against a real enemy missile. There is nothing elaborate or sensational in this proposition. In order to see if a system works, one has to take it out and use it. One missile has to be fired against another missile and knock down the intruding missile. If that is done with enough frequency and enough confidence, then the system is ready to go.

The first intercept flight test of the system was conducted in December 2002 and it failed. Six days after that test failure, President Bush announced the United States would deploy the missile defense system. Usually such announcements are reserved for success, not failure. In effect, it is almost like looking at a new, expensive jet fighter prototype going down the way, malfunctioning and then turning around and saying let us buy a lot of them, let us put them in the sky. That is not what most people believe is the appropriate criteria for being operational.

Over the next 2 years, seven other planned tests were cancelled. Yet, in September 2004, the system was declared nearly operational, with six interceptors at Fort Greely, AK, and two interceptors at Vandenberg Air Force Base. Three months later, in December 2004, the Missile Defense Agency then conducted the only second integrated flight test on a multibillion system. It too failed, and the system was now described as operational in the near future.

On February 14, there was another integrated flight test and it too failed. After these three consecutive failures, Lieutenant General Obering, director of the Missile Defense Agency, established an independent review team to examine test failures and recommend steps for improving the test program. The team made some very interesting observations.

First, I believe they confirmed suspicions that there was a rush to deployment, a rush not justified by the technology, its maturity, and by the operational techniques that were necessary to deploy it, but simply to get it deployed. The team report states:

> There were several issues that led to the flight test failures of the Integrated Flight Tests . . . With the focus on rapid deployment of the Ground-based Midcourse Defense system, there was not always adequate opportunity to fully ground test the system prior to each flight attempt. Again, skipping over critical steps to rush to a deployment.

The team also found:

> Schedule has been the key challenge that drives daily decision making and planning in the program.

Not the technological maturity of the system, not technical issues, but schedule was driving the technology, not the other way around.

The independent review team also took issue with the spiral development and lack of testing. Again, in their words:

> Due to the lack of application of a few well-known verification specification and standards by the GMD program, failure evidence suggests that some problems might have been during the launch. The team feels that considerable opportunity exists to improve the confidence in the reliability of hardware and software by adopting industry best practices that exist as specification and standards.

In effect saying, we have to have requirements, we have to have standards, we have to have specifications, we have to be able to measure this program and its components before we rush to deploy it, much of it echoing comments made on this floor by myself and many others.

The team report further states:

> There are not enough ground tests available to verify/validate system operational performance and reliability. The Joint Program office should consider redirecting some production assets for ground tests to gain a higher confidence in the GMD system performance.

The GMD review team would again recommend, in their words:

> The Ground-based Midcourse Defense Program enter a new phase focused on Performance and Reliability Verification, in which Missile Defense Agencies make tests and mission success the primary objective. The new phase should validate the technical baseline and should be event driven rather than schedule driven.

In effect, build on success, don't build based on schedule.

> General Obering also requested Rear Admiral Kate Paige to direct a Mission Readiness Task Force to study the review team's recommendations and put the program on a path to flight test and management success.

The Mission readiness task force, under the Admiral, made the following recommendation: Four interceptors previously planned for near-term operational deployment will be diverted to serve as ground test missiles. There will be a significant increase in ground testing of all systems, components, and processes before resuming flight testing. Contractors will be held accountable for their performance. The first flight test will not be an intercept test and the first intercept test will not take place for more than a year.

Let me commend General Obering and the Missile Defense Agency for implementing these recommendations. I believe they will go a long way toward improving the missile defense system, an objective we all share. However, I note these recommendations sound very familiar and one could only contemplate how much effort and money would have been saved if we had approached the system this way from the beginning—not rushing to failure, but building for success.

There are presently six ground-based interceptors in silos at Fort Greely and two in silos at Vandenberg Air Force base. The administration also requested, and the Congress has already approved, most of the funding for these 30 interceptors. As I have noted, there has yet to be a successful flight test of these interceptors, so we are already buying an additional 30 interceptors when we do not know how to make the first 6 work. I think a responsible approach is to slow the allocation of

funds for the procurement of these interceptors until they are proven operational and to use that funding for more pressing needs. This amendment does that.

The President's budget request seeks long-lead funding for 10 operational interceptors and 8 flight test interceptors, 18 missiles in all. However, the actual production rate capacity for the interceptors is 1 per month, or 12 per year. That means the Defense Department is seeking funds for more missiles than they can build in 1 year. There is no need to pay for more interceptors than can be built in 1 year.

Instead, we can provide 1 year's worth of funding for 1 year's worth of missiles—12 instead of 18. This amendment will not cause a break in the production line.

I also note the House Armed Services Committee, in its fiscal year 2006 Defense authorization bill, reduced the long-lead funding for five of the operational interceptors. The administration has not indicated that the proposed reduction would cause any serious problems for the program.

I also want to state that the President's budget request includes $53 million in long-lead funding for eight test missiles. It is essential to produce missiles for testing. This amendment would not reduce that funding for the test missiles at all. We realize we are in the test phase. The problem becomes we are attempting to buy operational missiles before we are sure the test missiles will really work. That, I think, is at the heart of much of the criticism.

Our missile defense systems are robustly funded in this bill with about $7 billion. What this amendment does is take money that cannot even be spent this year and allocate it to a new opportunity to prevent loose nukes, which is truly an imminent threat, an existential threat to this country. This amendment, which enhances security by funding one program without causing any harm to another program, is a win-win situation, and I urge my colleagues to support this amendment.

We are trying to exploit a diplomatic breakthrough that was engineered by President Bush in his meeting with President Putin that allows the expansion, rapidly, of inspection and securing of sites in the former Soviet Union and Russia. We are taking a truly modest amount of money, given about $6 or $7 billion for overall missile defense, and using that to try to prevent the proliferation of nuclear weapons and nuclear materials across the globe, which is the most serious threat that we face as a nation.

Mr. WARNER. Mr. President, if I might ask my distinguished colleague a question or two. We are all good, strong supporters of the CTR program. But I am informed that you are taking $50 million from the missiles. I will address that question momentarily. But I think the Senate should know this—and I ask if I am in error, if the Senator would correct me, if not now, perhaps one of your staff members, in due course, could assist. The Senate should know there is $500 million of unspent 2005 money in the CTR program. The amendment would take this program, which as you point out has some test problems, and to give it the body blow this amendment would render, for $50 million will virtually cause a very severe perturbation in the production line. The Senator is familiar with how the production lines work. There are estimates of cost up to as much as $270 million to restart the line at some point in the future. But with $500 million for 2005 unexpended in CTR, I hope, if colleagues look at this amendment fairly and practically, maybe judge it on the merits—the use of these funds, to me, is not a justification for supporting the amendment.

Mr. REED. I thank the Chairman for the question. My understanding is that the production cycle for the system, these interceptors, is 12 per year. Yet the budget is asking for more than that. So I don't think taking $50 million—as I understand the amendment, $30 million taken from long-lead, ground-based interceptors—taking $30 million away I do not think would upset the production line schedule. There is no intent to do that, and I think the effect would not be to do that also.

With respect to your point, which I think is well taken, about the buildup in funds in the comprehensive threat reduction, some of that—we will check more dutifully—but some of that to my knowledge is the result of the inability to agree on a way to deal with some of these sites. We hope that difficulty has been substantially reduced by President Bush and President Putin's discussion in Bratislava. Now that they have agreed on a framework, they can start applying this money.

Also, again, I think this money would be well spent, would not disrupt the production of the missile systems, and just the sheer scale—this is $50 million total, $30 million from the ground-based interceptors, $20 million for initial construction of silos and housing for the interceptors—again, this is truly long-lead procurement. We have, in my view, and I believe that of Senator LEVIN, much more of a problem in the site in Russia that contains the nuclear materials.

We have all heard the horror stories of people being able to walk in, walk around, and walk out of these sites without anybody interfering with them—no electronic equipment or sensors that would detect or report their presence to anyone's attention. So our view—my view, speaking for myself—is that this money could be much better spent, without disrupting the missile defense program, by applying it to comprehensive threat reduction.

Frankly, $500 million is an impressive amount of money that has not yet been spent, but we all recognize, if any of this material made its way outside these sites and got into the hands of irresponsible people, it would be serious.

Mr. WARNER. I agree with the Senator's premise but I wouldn't want Senators to believe that, if I am correct, the shortage of money is in CTR. I am informed there is, in the bank, $500 million of 2005 unexpended funds. Does the Senator want to address that now?

Mr. REED. I could say, Mr. President, we will try to determine this, but unexpended does not mean that it is not committed. Some of these funds could in fact be committed to specific sites already so that money can't be spent again elsewhere. We will try to get a number on that.

But the scale of the problem, the number of sites—it is in the order, just within Russia, of 200 sites.

Mr. WARNER. I am a big supporter of CTR. I happened to be in the room on the day CTR was born—by Sam Nunn. I will never forget it. I have followed the program. I have been a supporter. I think there is quite a bit of funding in this budget for CTR right now. I point out, if the Senator is persuaded by the fact that CTR needs the money more than the missile program—and I will argue the point strenuously that is not the case—there is quite a bit of money. We are way into the 2005 cycle. As a matter of fact, September is on the horizon.

So I hope the Senator could carefully research that point, come back, and if I am in error, I would certainly like to hear his views.

I point out the current bill is consistent with the President's program that allocated $50 million toward this next tranche of the long-lead, cumulative money for ground-based interceptors. If you take $30 million out of the $50 million, I assure you, that does considerable disruption to the production line.

Then I point out the amount available for construction of associated silos, reduced by $20 million. I wonder if you might take the chance to check on the fact that the President's budget in this bill only allocates $13.5 million to the initial construction of the associated silos, and therefore your $20 million is considerably in excess of the $13.5 million.

Mr. REED. Mr. President, my information indicates the fiscal year 2006 budget for expansion, there is $20.682 million. I will ask my staff to coordinate with your staff.

Mr. WARNER. We will have our staffs check those figures. I thank the Senator.

Mr. President, I would like to vigorously oppose this amendment for the following reasons. The impact of the amendment would be, first and foremost, to send a message that we are not supporting, as a nation, wholeheartedly the ballistic missile defense capabilities to defend ourselves. It is clear North Korea has capabilities. This program was engendered in large measure, and accelerated in large

measure because of the threat posed by North Korea.

I noted here recently that Japan is now building its missile defense system. So it is not that the United States alone, in the world of nations, considers it a threat; other nations consider the North Korean capabilities a threat. It is correct we have had these test bans, but the failures that more or less have been in the mechanical phase—somehow the missile is adjusted in its launch pad as opposed to the actual failure of the missile itself. And then I will address this question of the break in production which could result—assuming the program is restarted in its full measure—maybe up to $270 million is one estimate I have been given to restart it.

Again, I agree with the sponsors of the amendment that the Cooperative Threat Reduction Program is an important national security issue for the defense of our homeland against the growing threats. But asking us to choose between missile protection and CTR is a false choice. We need both. This bill funds the President's requested amount fully for both programs.

The bill before the Senate authorizes the requested amount of $415.5 million for CTR programs within the Department of Defense and $1.6 billion for other nonproliferation efforts in the Department of Energy. There is a very strong recognition in this bill before the Senate, the authorization bill, of the importance of CTR. There is no current need for extra CTR funds. That is our basic proposition. They have in the bank very substantial amounts from 2005. They are unexpended. Whether they have been committed, I will have that checked. With a backlog that large and only roughly 70 days left in the fiscal year—that is an awful lot of money if someone is going to try to commit it and expend it in that period of time.

The President's budget for missile defense, on the other hand, has already taken a considerable amount of cuts. Due to last-minute decisions made at the Department of Defense as the fiscal year 2006 budget was being finalized, the missile defense budget request was reduced by $1 billion in 2006 and $5 billion overall between 2006 and 2011.

The sponsors of this amendment argue we should not provide long-lead funding for the GBI missiles 31 to 40 because of test failures. I am mindful of the recent difficulties encountered by the GMD system test program, but it is my view and that of the Department—and, indeed, independent authorities have looked at this problem—that these difficulties do not represent serious technological hurdles by the GMD program. Indeed, such problems are to be expected during the R&D and development phase of complicated weapons systems.

To get at the root cause of the testing problems, the Director of the Missile Defense Agency, to his great credit, commissioned the Independent Review Team, called the IRT, to examine the recent GMD test failures. The IRT found, one, that no fundamental GMD system design flaws are related to the recent test failures. Moreover, this independent panel found no evidence that major modifications of the current system hardware or software will be required. In other words, it is unlikely that future testing will find some major fault in the system that will require costly retrofit to the already fielded and those in production line of the GBIs.

For those of my colleagues concerned about testing, I point out that this bill before you contains a provision—developed in a bipartisan fashion during the committee's markup—which requires the Missile Defense Agency, the service operational test agencies, and the Director of Operational Test and Evaluation to plan and conduct tests that demonstrate the operational capability of the ballistic missile defense system. The bill also reallocates $100 million from longer-term development efforts to GMD testing, consistent with the recommendations of the Independent Review Team.

The current and growing threat posed to our country by long-range ballistic missiles argues for proceeding without delay with the Department's approach of concurrent testing and fielding of ballistic missile defense capabilities for the homeland.

Some of my colleagues suggest that because the current system is not fully proven, we should not procure additional missile interceptors. To this I would respond that General Cartwright, Commander of U.S. Strategic Command—the senior military official charged with advising the Secretary of Defense and the President on missile defense matters—has testified, with respect to the current GMD system, that "in an emergency, we are in fact in the position that we are confident that we can operate and employ it."

In addition, the Pentagon's chief independent weapons tester, the Director for Operational Test and Evaluation, noted in his most recent Annual Report to Congress that "the test bed architecture is now in place and should have some limited capability to defend against a threat missile from North Korea."

In my view, it is a good thing that we have some capability—albeit limited—to defend the homeland against long-range missiles. For as General Cartwright testified before the Senate Armed Services Committee in April, "we have a realistic threat here; we have an imperative."

General Cartwright is referring to CIA and DIA estimates that the North Korean Taepo-Dong 2 ballistic missile is capable of reaching the United States with a nuclear warhead—and that North Korea could resume flight testing of the Taepo-Dong 2 at any time. The Defense Intelligence Agency also estimates that Iran will have the capability to develop an intercontinental ballistic missile, ICBM, by 2015.

We simply can't wait until the threat is upon us to deploy missile defenses; we can't wait until the GMD system is fully and completely tested before we start providing some measure of protection against this threat. It is our responsibility to field what capabilities currently exist, even while we continue to test and improve the system. By continuing to field missile defenses today, we send a message to potential adversaries that we will not be deterred or coerced by their possession of long-range ballistic missiles.

In summary, I ask my colleagues to reject the amendment offered by Senator LEVIN. This amendment would needlessly delay the fielding of a ballistic missile defense capability to protect the homeland. As the Commander of STRATCOM warns, the threat is real. We must continue on the current path of fielding available capabilities—even while testing continues to improve the system over time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President I express my gratitude to the distinguished chairman and other members of the Senate Committee on Armed Services for the work they do. The chairman has worked long and hard to try to bring this bill to the Senate floor and do things in the best interest of our country, and others have worked with him. I appreciate that.

Mr. HATCH. Mr. President, I rise today as an ardent supporter of the F/A–22 Raptor. I am pleased that the Armed Services Committee has agreed to authorize appropriations for 24 F/A–22 Raptors. However, I am deeply troubled that the Department of Defense has made the decision to only purchase this extraordinary aircraft through fiscal year 2008, in effect, limiting the number of Raptors to 180. This is far below the 381 aircraft that the Air Force has repeatedly stated are required for that service to meet its responsibilities as outlined in the National Defense Strategy.

Over the past year and half, I have made two trips, to be briefed on the capabilities of this extraordinary aircraft. The first was to Tyndall Air Force Base, FL, where our pilots are learning to fly the Raptor and second to Langley Air Force, VA, where the first operational F/A–22 units will be based. As a result of these meetings and discussions with the pilots who are training to fly the aircraft and the ground personnel who are learning to maintain the Raptor, I have come to conclusion that purchasing sufficient numbers of Raptors is absolutely vital to our national security.

Over the past 30 years, the United States has been able to maintain air superiority in every conflict largely due to the F–15C. However, with the great advancements in technology over the past several years, the F–15 has struggled to keep pace. For example,

the F–15 is not a stealth aircraft and its computer systems are based on obsolete technology. My colleagues should remember that the F–15 first flew in the early 1970s. During the ensuing years, nations have been consistently developing new aircraft and missile systems to defeat this fighter.

Realizing that the F–15 would need a replacement, the Air Force developed the F/A–22 Raptor. The result is a truly remarkable aircraft.

The F/A–22 has greater stealth capabilities than the F–117 Nighthawk. This is a powerful attribute when one remembers that it was the Nighthawk's stealth characteristics that enabled that aircraft to penetrate the integrated air defenses of Baghdad during the first night of the 1991 gulf war.

The Raptor is also equipped with super-cruise engines. These engines do not need to go to after-burner in order to achieve supersonic flight. This provides the F/A–22 with a strategic advantage by enabling supersonic speeds to be maintained for a far greater length of time. By comparison, all other fighters require their engines and these are foreign fighters, as well—to go to after-burner to achieve supersonic speeds. This consumes a tremendous amount of fuel and greatly limits an aircraft's range.

The F/A–22 is also the most maneuverable fighter flying today. This is of particular importance when encountering newer Russian-made aircraft which boast a highly impressive maneuver capability.

Yet a further advantage resides in the F/A–22's radar and avionics. When entering hostile airspace, one F/A–22 can energize its radar system, enabling it to detect and engage enemy fighters far before an enemy's system effective range.

However, one of the most important capabilities of the Raptor is often the most misunderstood. Many critics of the program state that, since much of the design work for this aircraft was performed during the Cold War, it does not meet the requirements of the future, I believe that this criticism is misplaced. The F/A–22 is more than just a fighter, it is also a bomber. In its existing configuration it is able to carry two 1,000 pound GPS-guided JDAM bombs and the aircraft will also be able to carry the Small Diameter Bomb. In 2008, the F/A–22's radar system will be enhanced with a ''look-down'' mode enabling the Raptor to independently hunt for targets on the ground.

All of these capabilities are necessary to fight what is quickly emerging as ''the'' threat of the future—the anti-access integrated air defense system. Integrated air defenses include both surface to air missiles and fighters deployed in such a fashion as to leverage the strengths of both systems. Such a system could pose a very real possibility of denying U.S. aircraft access to strategically important regions during future conflicts.

It should also be noted that—for a comparably cheap price—an adversary can purchase the Russian SA–20 surface-to-air missile. This system has an effective range of approximately 120 nautical miles and can engage targets at greater then 100,000 feet, much higher then the service ceiling of any existing American fighter or bomber. The Russians have also developed a family of highly maneuverable fighters, the Su–30 and 35s, which have been sold to such nations as China. Of further import, 59 other nations have fourth generation fighters.

It has also been widely reported in the aviation media that the F–15C, our current air superiority fighter, is not as maneuverable as newer Russian aircraft, especially the Su–35. However, the F/A–22 is designed to defeat an integrated air defense system. By utilizing its stealth capability, the F/A–22 can penetrate an enemy's airspace undetected and, when modified, independently hunt for mobile surface-to-air missile systems. Once detected, the F/A–22 would then be able to drop bombs on those targets. Some, correctly state that the B–2 bomber and the F–117 could handle these assignments. However, the F/A–22 offers the additional capability of being able to engage an enemy's air superiority fighters such as the widely proficient Su–35. Therefore, the Raptor will be able to defeat, almost simultaneously, two very different threats that until now have been handled by two different types of aircraft.

I should like point out that these potential threats are not just future concerns, but they are here today. For example, last year the Air Force conducted an exercise called Cope India, as part of our effort to strengthen relations with India. The Indian Air Force has a number of Su-30 MKKs, an aircraft which is very similar to a version of aircraft sold in large quantities to the People's Republic of China. During this exercise, it has been widely reported in the aviation and defense media that the Indian Air Force's Su-30s won a number of engagements when training against our Air Force's F–15s.

So let me be clear on this point: a developing nation's air force was able to defeat the F–15. This was a stunning event and one that requires our immediate attention.

Despite the obvious advantages, and now necessity, of this aircraft, the Department of Defense has made the decision to purchase only 180 F/A–22s.

Some argue that the cost of this aircraft is too high.

In response, the supporters of the F/A–22 devised a new procurement strategy called ''Buy to Budget.'' This strategy capped the total cost for the procurement of the aircraft and forced the Air Force and the Raptor's primary contractor, Lockheed Martin, to cut the cost of plane. These efforts have so far been successful, and two years ago an additional F/A–22 was procured solely based upon savings.

I am also pleased to state that recent articles in the media report that the ''fly-away'' price for an F/A–22 is now approximately $130 million, down from $185 million an aircraft. Officials of the manufacturer are quoted as saying that each new lot of Raptors costs on average 13 percent less than its predecessor. The manufacturer also believes that this price can be further brought down to the $110 million range. Now, of course, this is still a lot of money. However, when compared to similar aircraft such as the nonstealth Eurofighter, which cost approximately $110 million an aircraft, coupled with the estimated cost, as high as $90 million, for a new F–15, one easily conclude that the F/A–22 is much better deal then its critics contend.

I wish to reiterate a point that is deeply troubling. I have always listened very closely when our servicemembers have outlined their equipment requirements based upon the national security goals that our Government has outlined. As I have studied this issue, I have been struck by the unanimous opinion of all the members of the Air Force to whom I have spoken.

What is their expert opinion? That if the Air Force is to succeed in the tasks outlined in our National Defense Strategy that they require additional F/A–22 aircraft.

I should also add that this is not just the opinion of those stationed here in Washington but the opinion of the pilots and ground crew in the field such as those of Tyndall Air Force Base and Langley Air Force Base. They were truly excited about the F/A–22 Raptor's potential.

They understand that this aircraft will ensure American dominance of the skies for the next half century.

These young men and women stand ready to sacrifice so much for us, we owe them the best that our country has to offer. Therefore, I respectfully urge my friends in the Department of Defense to rethink their plans for this aircraft and provide our warfighters sufficient numbers of this remarkable fighter/bomber.

I ask that the pending amendment be set aside so I can call up another amendment.

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

AMENDMENT NO. 1516

Mr. HATCH. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. INHOFE, Mr. BENNETT, and Mr. CHAMBLISS, proposes an amendment numbered 1516.

Mr. HATCH. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To express the sense of the Senate regarding the investment of funds as called for in the Depot Maintenance Strategy and Master Plan of the Air Force)

On page 66, after line 22, insert the following:

SEC. 330. SENSE OF THE SENATE REGARDING DEPOT MAINTENANCE.

(a) FINDINGS.—The Senate finds that—

(1) the Depot Maintenance Strategy and Master Plan of the Air Force reflects the essential requirements for the Air Force to maintain a ready and controlled source of organic technical competence, thereby ensuring an effective and timely response to national defense contingencies and emergency requirements;

(2) since the publication of the Depot Maintenance Strategy and Master Plan of the Air Force in 2002, the service has made great progress toward modernizing all 3 of its Depots, in order to maintain their status as ''world class'' maintenance repair and overhaul operations;

(3) one of the indispensable components of the Depot Maintenance Strategy and Master Plan of the Air Force is the commitment of the Air Force to allocate $150,000,000 a year over 6 years, beginning in fiscal year 2004, for recapitalization and investment, including the procurement of technologically advanced facilities and equipment, of our Nation's 3 Air Force depots; and

(4) the funds expended to date have ensured that transformation projects, such as the initial implementation of ''Lean'' and ''Six Sigma'' production techniques, have achieved great success in reducing the time necessary to perform depot maintenance on aircraft.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Air Force should be commended for the implementation of its Depot Maintenance Strategy and Master Plan and, in particular, meeting its commitment to invest $150,000,000 a year over 6 years, since fiscal year 2004, in the Nation's 3 Air Force Depots; and

(2) the Air Force should continue to fully fund its commitment of $150,000,000 a year through fiscal year 2009 in investments and recapitalization projects pursuant to the Depot Maintenance Strategy and Master Plan.

Mr. HATCH. Today I rise to propose an amendment that is cosponsored by fellow members of the Senate Air Force Depot Caucus, specifically Senators INHOFE, BENNETT and CHAMBLISS. Before I proceed to discuss the merits of my amendment, I thank publicly my colleagues, and their staffs, of the depot caucus, not only for their assistance in supporting this amendment, but for the tireless work that we have all performed over the past several years to modernize and recapitalize our Nation's Air Force Depots.

Why is that important? Why do we need our Air Force Depots? Simply put, today the United States boasts the most formidable military that the world has ever known. However, history has shown, that a technologically superior force can be defeated if the weapons systems being utilized by that force cannot be maintained or repaired in a timely fashion.

Mindful of this lesson, the Department of Defense and Congress have created an infrastructure designed to meet the unique sustainment challenges faced by a nation that harnesses the advantages of technology on the battlefield. It bears remembering that one of our Nation's primary means of maintaining this advantage is through the integrated sustainment support provided by the Air Force's depots. This is true for the maintenance of tactical aircraft, such as the F–16 and A–10, which is performed in my home State of Utah at Hill Air Force Base. Tactical aircraft require this level of maintenance due to the stress caused by supersonic flight and high-g turns. Our tanker and airlift fleets also require this level of service due to corrosion and metal fatigue.

Equally impressive, this support is accomplished while simultaneously providing supply chain management for millions of components and pieces of equipment. However, what makes our depots truly vital to national security is their ability to provide immediate support during periods of conflict or urgent need. In fact, no one matches our Nation's depots in meeting the critical ''surge'' requirements of our Nation.

Unfortunately, during the 1990s, our Nation did not make the necessary investments in our depots to build and procure technologically advanced facilities and equipment technologies. Therefore, the depots were not meeting their full potential. Congress and the Air Force identified this problem and, I am proud to say, worked together to find a solution. That solution was the Air Force Depot Maintenance Strategy and Master Plan. This strategy reaffirmed our Nation's commitment to the ''essential requirement for the Air Force to maintain a ready and controlled source of organic technical competence to ensure an effective and timely response to national defense contingencies and emergency requirements.''

But more than just a piece of paper articulating lofty goals, this strategy committed the Air Force to allocating $150 million a year for 6 years in order to achieve the objectives of maintaining the depots status as ''world class'' maintenance repair and overhaul operations.

One of the most clear examples of how this money has been constructively allocated can be found in the success of the initial implementation of revolutionary lean production techniques at our Nation's depots. Lean manufacturing principles, first developed by the Toyota Corporation, aim to eliminate waste in every area of production. In practice, workers are no longer just responsible for a specific section of production. Workers are challenged to develop new skills and trades so they are responsible for more portions of the production process.

The results have been outstanding. Workflow days, the days it takes to provide maintenance to a part or system, are down. At Hill Air Force Base, the C–130 and F–16 aircraft maintenance lines have achieved and sustained 100-percent on-time delivery rates, a large extent due to the efficiencies created by lean techniques. When you tour our depots, you can sense the excitement and renewed pride the workers have, in part, because of the lean processes and the new tools and infrastructure provided by the funds allocated by the Depot Strategy which make lean possible. This has truly been a successful investment.

Another example of how the funds allocated under the Depot Strategy are assisting the war fighter while providing value to the taxpayer can be found in a project in this year's Defense authorization bill. Hill Air Force Base is home to one of only two Carnegie Mellon-rated capable maturity model level 5 software centers in the Department of Defense. A level 5 designation facility indicates that the facility is in the top 2 percent of all software development centers. In addition, Hill's Software Engineering Division affords the Air Force a $40-per-hour labor rate savings over its major industry competitors.

For these reasons, the Air Force decided to increase the amount of work performed by the division by 176,000 direct product standard hours. However, the existing building is full and unable to support the increase in personnel necessary to accomplish this new workload. The funding allocated under the Depot Maintenance Strategy provides the solution, and this bill authorizes appropriations to build a new extension to the facility. Not too bad when it has been determined that this project will pay for itself in 8.75 years.

We are only halfway through the 6-year investment plan as called for by the Depot Maintenance Strategy. I rise with my colleagues to say to the Air Force: Well done. But I must add—and this is the essential point of my amendment—the Air Force must keep going. The depots have made enormous progress in even further efficiently supporting the war fighter, which now is more important than ever. However, if we are to support our war fighters in the manner in which they deserve, this investment must continue. The first steps have been made. Completing the full 6 years of Depot Strategy modernization funding is an essential component to ensure we will always provide the best to the men and women who risk so much to keep us free.

Mr. President, I also desire at this time to thank three individuals who have been steadfast supporters of the Depot Maintenance Strategy.

First, I must recognize retiring Assistant Secretary of the Air Force Nelson Gibbs, who is one of the authors of Depot Strategy. We would not be where we are today without his support and guidance. I wish him well in his well-deserved retirement. I also wish to thank the implementers of the Strategy, GEN Lester Lyles, the former commander of Air Force Materiel Command and its present commander, and

my good friend, GEN Gregory Martin. You will not find two finer officers who have ever served. To them I say: Thank you for your leadership and guidance in modernizing our infrastructure so we can most efficiently and effectively support the war fighter. I thank them.

I thank my colleagues, all of whom support this as well.

Mr. President, I yield the floor to my colleague.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I will first make a comment or two.

Mr. WARNER. Mr. President, may the manager of the bill address the Senate for a moment?

The PRESIDING OFFICER. Will the Senator from Oklahoma yield?

Mr. WARNER. Mr. President, the way we run is the managers usually try to get recognition.

What we would now like to do, Mr. President, is to have the Senator from Oklahoma address his amendments—for what period of time?

Mr. INHOFE. Mr. Chairman, I would like to have a few minutes to respond to some of the substance of the two subjects discussed by the Senator from Utah. Then I would like to describe the amendments I have offered. It will probably take me 20 minutes.

Mr. WARNER. I thank the Senator from Oklahoma.

The Senator from Florida desires recognition, so I would ask the Senator from Florida if he could give a rough estimate of the time he would like following the Senator from Oklahoma.

Fifteen minutes. Mr. President, I ask unanimous consent that the Senator from Oklahoma now be recognized for a period not to exceed 20 minutes, to be followed by the Senator from Florida.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. WARNER. Could we act on the UC request, Mr. President?

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

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first of all, let me say I was listening intently while the senior Senator from Utah talked about the F/A–22. I would like to add one thing that perhaps he assumes everyone is aware of, but I keep finding people are not aware of it, and that is the Chief of the Air Force now, General Jumper, not too long ago, I think 1997, made a very courageous observation. He called to the attention of the American people that the Russians were making—at that time he was referring to the Su–30, a strike vehicle, that it was actually better than anything we had in our inventory, our F–15 or F–16.

I think a lot of people assumed automatically that when we go onto the battlefield America has the very best of equipment. That is not true. It is kind of scary when you think about a strike vehicle that is out there that has greater capability than our very best and the fact that the American people expect the United States to have the best of everything.

I have talked on this floor many times about the fact that our artillery piece is not as good as one that is made in five different countries. The old Paladin technology is World War II technology. That is something we are going to correct with our future combat system.

But I commend the Senator from Utah for his comments about the F/A–22. When we get the joint strike fighter and the F/A–22, we will be back in a position where we will be sending our young people out there with the best of equipment. We need to get there as rapidly as possible.

I also want to make a comment about the depot funding plan amendment that is offered by Senator HATCH. It supports the important and vital work being performed by our aircraft depot facilities.

Since the Bush administration came into office, we have seen a renewed interest in the Air Force's depots. To kind of fill us in where we are right now with that, I can remember when the last Secretary of the Air Force came in, his first trip was to Tinker Air Force Base to see how creative they were, to kind of personally examine the kind of work they were doing. He recognized we have to handle the problem that has been there for many, many years; that is, we need to have an in-house capability for depot maintenance on core issues.

The problem has always been: How do you define the core issue? The core issue is not an easy thing to describe and define. But until it is properly defined, we have been using the ratio of 50–50; in other words, to have the in-house capability to handle 50 percent of the functions in the case of a war so we would not be held hostage to a single source contractor.

The key to this overall reinvigoration has been the Air Force's Depot Maintenance Strategy and Master Plan that will ensure America's air and space assets are ready to rapidly respond to any national security threat. Because of this plan we have begun a restoration and modernization of our Air Force's three depot facilities located in Oklahoma, Utah, and Georgia, which will ensure the United States is able to maintain world-class aircraft repair and overall facilities.

If we are to realize the end result of this Maintenance Strategy and Master Plan, it is incumbent upon Congress to fulfill the Air Force's commitment for allocating $150 million a year, over a 6-year period, for recapitalizing, investing, and procuring advanced facilities, equipment, and operation. This funding began in fiscal year 2004, and significant in-roads have already been made.

In one year alone, with this funding support, the Air Mobility Command reported that the rate of aircraft grounded due to parts issues decreased by 37.6 percent. It bettered its flying hour goal by 922,000 hours. The rate of aircraft incidents due to parts issues decreased by 23.4 percent. Logistics response time increased by 20.4 percent. And the level of spare parts in stock improved by 5.5 percent. Such improvements are an indication of the impact of this funding, and this was only a single 1-year period.

We have spoken frequently in this body about the advanced age and challenges of some of our most critical low-density, high-demand aircraft, such as the C–130 tactical airlifter, and the KC–135 refueling tanker. The average age of the C–130 E and H models flying today is 40 years. The average age of the KC–135 E and R models flying today is 44 years. We went through some arduous times, several years ago—about 15 years ago—getting the C–17 on line. It was a recognition that we have to modernize this fleet. I am very thankful we have increased the numbers as the years have gone by. No one would have ever believed, prior to Bosnia, Kosovo, Afghanistan, and Iraq, the need we would have on these heavy-lift vehicles.

We could go on and on, but the point we want to make is, if we are going to keep our aging fleet of aircraft flying, we must not only maintain them but we must also modify them and give them the latest technology, avionics and things, so we will provide our young people with the same advantage that some of our prospective opponents would have.

At our Air Force depots today, we require engineers and fabrication technicians to solve ever-challenging design and structural problems due to aircraft stress and fatigue that were never anticipated when the aircraft were manufactured. But because of age, we are seeing such flaws. The civilian aviation industry recapitalizes, buying new aircraft when their planes are no longer feasible to fly. Unfortunately, our Air Force does not have such a luxury. The effort the Air Force has started with the Depot Maintenance Strategy and Master Plan must be sustained, and Congress must provide the necessary resources.

In light of this, I applaud the sense of the Senate being offered by Senator HATCH. This has been a problem we have seen coming. We know it is there. We have been able to now give our depots some of the same resources, some of the same modernization. They have, on a competitive basis, proven they can do a very good job.

AMENDMENT NO. 1313

Mr. INHOFE. Mr. President, I have two amendments I have already filed. The second amendment is going to require a new number. The two I am going to be discussing are the ICRC amendment. I have several cosponsors of the amendment, including Senator KYL. I ask unanimous consent that Senator ENZI be added as a cosponsor to amendment No. 1313.

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

Mr. INHOFE. The other amendment has a new number. We have talked about it before. It is the U.S.-China

Commission amendment. It is now No. 1476. It is my intention to make a few comments about these two and then to ask for the yeas and nays. We would like to get to a vote on these amendments by tonight.

First, the amendment concerning the ICRC. I simply want to clarify some people's thinking that the ICRC is not the American Red Cross. This is the International Committee on the Red Cross. It has no relationship to the American Red Cross.

My first concern is for American troops. The ICRC has been around since 1863 and has been there for American soldiers, sailors, airmen, and marines throughout two world wars. I thank them for that work. Likewise and moreover, I thank all Americans for military service to America. I did have occasion to be in the U.S. Army. It was the best thing that ever happened in my life. In my continuing preeminent concern for American troops, however, I am compelled to note some concerns and pose some questions about a drift in focus of the ICRC away from its core principles in its mission statement. Indeed, I fear the ICRC may be harming the morale of our American troops by unjustified allegations that detainees and prisoners are not being properly treated.

For example, an ICRC official visited Camp Bucca, a theater internment facility for enemy prisoners that is, as of January 2005, being operated by the 18th Military Police Brigade and Task Force 134, near Umm Qasr in southern Iraq. As of late January 2005, the facility had a holding capacity of 6,000 prisoners but only held 5,000. These prisoners were being supervised by 1,200 Army MPs and Air Force airmen. According to the Wall Street Journal, citing a Defense Department source, the ICRC official told U.S. authorities:

> You people are no better than and no different than the Nazi concentration camp guards.

I ask unanimous consent that this entire article be printed in the RECORD at the conclusion of my remarks about the ICRC.

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

(See exhibit 1.)

The Senate Armed Services Committee has now held 13 hearings on the topic of prisoner treatment.

Sometimes we get bogged down in all the detail and we forget about the overall picture, the big picture. And I'm shocked when I found, only last Tuesday, from the Pentagon's report, that after 3 years and 24,000 interrogations, there were only three acts of violation of the approved interrogation techniques authorized by Field Manual 3452 and DOD guidelines.

The small infractions found were found by our own government, corrected and now reported. In all the cases no further incidents occurred. We have nothing to be ashamed of. What other country attacked as we were would exercise the same degree of self-criticism and restraint. Again, keep in mind, 24,000 interrogations, and they only found three. And they were found by us, not somebody else snooping around.

Most, if not all, of these incidents are at least a year old. I am very impressed with the way the military, the FBI, and other agencies conducted themselves. The report shows me that an incredible amount of restraint and discipline was present at Gitmo.

Having heard a lot about the Field Manual 3452, I asked, ''Are the DOD guidelines, as currently published in that manual, appropriate to allow interrogators to get valuable information, intelligence information, while not crossing the line from interrogation to abuse?'' The answer from Gen. Bantz J. Craddock, Commander of U.S. Southern Command was, ''I think, because that manual was written for enemy prisoners of war, we have a translation problem, in that enemy prisoners are to be treated in accordance with the Geneva Conventions—that doesn't apply. That's why the recommendation was made and I affirmed it. We need a further look here on this new phenomenon of enemy combatants. It's different, and we're trying to use, I think, a manual that was written for one reason in another environment.''

Lt. Gen. Randall M. Schmidt, the senior investigating officer said, ''Sir, I agree. It's critical that we come to grips with not hanging on a Cold War relic of Field Manual 3452, which addressed an entirely different population. If we are, in fact, going to get intelligence to stay ahead of this type of threat, we need to understand what else we can do and still stay in our lane of humane treatment.''

Brig. Gen. John T. Furlow, the investigating officer, stated, ''Sir, in echoing that, F.M. 3452 was originally written in 1987, further updated and refined in 1992, which is dealing with the Geneva question as well as an ordered battle enemy, not the enemy that we're facing currently. I'm aware that Fort Huachuca's currently in a rewrite of the next 3452, and it's in a draft form right now.''

It is clear that our military has humane treatment placed at the forefront of their concerns.

At the same time I want to ask: What other country would freely discuss interrogation techniques used against high-value intelligence detainees during a time of war when suicide bombers are killing our fellow citizens?

That was disturbing to me. The last of the many hearings we had was one where they were describing in detail our interrogation techniques, knowing full well that the terrorists are watching on live TV and training their people on how to handle those. I think it is something on which we have gone far enough. That is another subject we will be discussing in a few minutes.

In the past 15 years, the United States has provided more than $1.5 billion in funding to the ICRC. I ask for some accountability for the use of this money and a modicum of oversight. For example, I think it is fair to ask: How is our money being spent? What are the activities of the ICRC to determine the status of American POWs/MIAs, unaccounted for since World War II? What were the efforts of the ICRC to assist America's POWs held in captivity during the Korean war, the Vietnam war, and other subsequent conflicts? Has the ICRC exceeded its mandate, violated established practices or principles, or engaged in advocacy work that exceeds the ICRC's mandate as provided under the Geneva Convention? That essentially is what this amendment does.

At this point I will read the very last paragraph of the Wall Street Journal article. It says:

> We are trying to understand how a representative of an organization pledged to neutrality and the honest investigation of detainee practices could compare American soldiers to Nazi SS. And considering the timing and content of several ICRC confidentiality breaches concerning the U.S. war on terror, it's fair to ask if similar views aren't held by a substantial number in the organization.
>
> The world needs a truly neutral humanitarian body of the sort the ICRC is supposed to be. But the Camp Bucca incident—in addition to leaked Gitmo and Abu Ghraib reports—is evidence it isn't currently up to the task.

EXHIBIT 1

[From the Wall Street Journal, May 23, 2005]

AS BAD AS THE NAZIS?

The International Committee of the Red Cross is granted a privileged status to inspect the conditions of prisoners of war and other detainees in return for confidentiality. But in recent years it has demonstrated a habit of selective media leaks damaging to American purposes. This is the backdrop for two recent incidents that make us think the U.S. should reconsider the ICRC's role.

The first concerns a story we heard first from a U.S. source that an ICRC representative visiting America's largest detention facility in Iraq last month had compared the U.S. to Nazi Germany. According to a Defense Department source citing internal Pentagon documents, the ICRC team leader told U.S. authorities at Camp Bucca: ''You people are no better than and no different than the Nazi concentration camp guards.'' She was upset about not being granted immediate access shortly after a prison riot, when U.S. commanders may have been thinking of her own safety, among other considerations.

A second, senior Defense Department source we asked about the episode confirmed that the quote above is accurate. And a third, very well-placed American source we contacted separately told us that some kind of reference was made by the Red Cross representative ''to either Nazis or the Third Reich''—which understandably offended the American soldiers present.

The world needs a truly neutral humanitarian body of the sort the ICRC is supposed to be. But the Camp Bucca incident—in addition to the leaked Gitmo and Abu Ghraib reports—is evidence it isn't currently up to the task.

Mr. INHOFE. Mr. President, I have been informed I will be asking for the yeas and nays for two different amendments. I will do that after explaining the second amendment.

I know the Senator from Florida, under UC, now has 15 minutes. My time is about to expire. I would ask unanimous consent that at the conclusion of the remarks of the Senator from Florida, I be recognized to present what was amendment 1312 and now is No. 1476. And at the conclusion, I will be asking for the yeas and nays.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I ask unanimous consent to be recognized following the Senator from Oklahoma.

Mr. INHOFE. I ask unanimous consent that I be recognized for 15 minutes, followed by the Senator from North Dakota.

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

The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I want to speak on the Defense bill to point out a major national asset with regard to our military preparation. What I am about to say actually involves some subterranean negotiations that are going on outside of the light of day on another bill, on the Energy conference bill, but it relates directly to what we are doing here. I want to point it out.

One of the great national assets we have is off the coast of Florida called restricted airspace. As you can see, off the northeast coast of Florida from Cape Canaveral north all the way to Savannah, GA is a considerable bit of restricted airspace. You will also notice on this map of the peninsula of Florida and the Gulf of Mexico that almost the entire area of the Gulf of Mexico off of the State of Florida is restricted airspace. It is not any puzzle to understand when the Atlantic fleet, U.S. Navy training, was shut down on the island of Vieques off of Puerto Rico, that most of that training came here to northwest Florida. Not only because of the major military facilities at Pensacola, Whiting, Eglin Air Force Base, Tindale Air Force Base, where, by the way, we have been talking about the FA–22, the training for the pilots is at Tindale Air Force Base right here. The training for the pilots for all branches of Government for the new F–135, the joint fighter, is done at Eglin Air Force Base. Why? Because we have the restricted airspace in which that training can occur and where land, sea, and air exercises can be coordinated. That is a major national asset.

Alas, people, certain interests, want to come out here and drill for oil in the eastern Gulf of Mexico. You can't be conducting these military maneuvers, this training that is so essential to our mission in the Department of Defense, you can't be doing that if you have to worry about oil rigs on the surface of the Gulf of Mexico below. That is the same right over here on the east coast, a battle I had to wage 15, 20 years ago when it was proposed to drill from Cape Hatteras, NC all the way south to Fort Pierce, FL. Ultimately, we won that battle with the recognition by the DOD and NASA that you can't have oil rigs where you are dropping the solid rocket boosters from the space shuttle and where we are dropping the first stages of the expendable booster rockets coming out of the Cape Canaveral Air Force station.

We took on this fight a month or so ago when the Energy bill was here and we won this fight, thanks to the agreement of the chairman and the ranking member of the Energy Committee that they would not support any amendments that would allow drilling out here in the eastern gulf.

Speaking of that, just so you can see how dramatic it is that the eastern gulf does not have this drilling, I want you to look at this particular map of the gulf coast—Texas, Louisiana, Mississippi, Alabama, Florida. You will notice the drilling, as represented by the green, is where the oil is. The geology shows that there is no drilling in the eastern gulf. There is no oil there. But there is another reason there are not rigs there, besides the dry holes they came up with, and it is all of that area is restricted air space. Now, all well and good.

Mr. President, we have just intercepted an e-mail from the White House, and it is an e-mail sent to energy conference conferees—something that has some significance to the occupant of the chair. Attached is the administration's proposal. The proposal would allow for new leasing activities in the eastern gulf. They define it in Louisiana waters as defined by the use of seaward lateral boundaries. They go on in this White House e-mail to say:

> Interior and the Office of Management and Budget have signed off on this language.

Well, let's sound the alarms because here is what they plan to do. We went through this drill a couple months ago when the Energy bill was here. Why? We got the chairman of the Energy Committee and the ranking member to agree to oppose these amendments—this is in the CONGRESSIONAL RECORD—because this line, which is the Florida-Alabama line, beyond which there is no leasing in any of the waters of the gulf, well, suddenly, they are going to draw the line of the State of Louisiana, which is over here, to be a line that comes out here and goes into the eastern Gulf of Mexico, under the fiction that that line would be the waters of Louisiana and, thus, giving a pretext to invade the waters off of Florida, including the waters underneath the restricted airspace, to allow oil and gas drilling.

The administration is pushing a proposal in the conference between the House and the Senate that does not have such a provision in either bill. To the contrary. The House took a position against drilling in the eastern gulf, and the Senate did likewise in the agreement of the chairman and the ranking member.

So I want to alert the Senate. I hope this is not going to be the case because we are down to a week before everybody wants to go home for the August recess and do all of their town hall meetings, and so forth. I know there is the interest in passing an energy conference bill, if they reach agreement. Clearly, I don't want to slow up the energy conference bill if they reach agreement. But, of course, if the representations and the agreements that were made in good faith are broken—in fact, that were made on the floor of the Senate and are part of the CONGRESSIONAL RECORD—if those agreements are broken, this Senator from Florida will have no choice.

This would represent a reversal of administration policy because this administration has pledged to uphold the moratorium on the Outer Continental Shelf from drilling until the year 2012. Although a portion right there is not included within the moratorium, nevertheless, the line they have drawn clearly includes other portions of the moratorium. It is a reversal of administration policy.

It would also give this area, called lease-sale 181, to the State of Louisiana. If lease-sale 181 is part of the State of Louisiana, off of the coast of Florida, then why did the administration negotiate in 2001 to cut back lease-sale 181 from 6 million acres to a million and a half acres, so it would not go over the Florida-Alabama line? There are all kinds of inconsistencies here. It is purely—call it what it is; it is an intent to drill for oil and gas off of the coast of Florida.

I can tell you that 18 million people in Florida don't want oil rigs off their shores. In the first place, the geology shows, along with many dry holes, that there is not much oil and gas. In the second place, we have an extraordinary $50 billion a year tourism industry that depends on what? It depends on what is depicted in this picture. This other picture is not what we want. This is a photograph from a month and a half ago when we had the Energy bill on this floor of 100 pelicans that were killed as a result of an oil spill off of Louisiana—that is a recent photograph—and another 400 were severely damaged. We don't want that. We want the other.

The third reason is one I had explained at the outset. This is what we want for the defense of our country. We want to continue to do our training. We want all of that training that has come from Puerto Rico to go unhampered off of the coast of Florida, where land, sea, and air military exercises can be coordinated without the threat of interference from oil rigs below.

The fourth reason is the coast of Florida has something besides our natural beauty and beaches. It has some of the most pristine and ecologically sensitive estuaries, rivers, and bays that come into the gulf. That is a very important place to keep so that the balance of nature can occur with the oceans.

For all of these reasons, I wanted to share with the Senate that I hope I don't have to be out here later this

week making these speeches again because I took it at face value and in good faith that the representations that were made here were going to stick. If they do not, then the Senator from Florida will have to judge accordingly.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

AMENDMENT NO. 1313

Mr. INHOFE. Mr. President, so we can get procedurally back where we should be, I ask unanimous consent that the current amendment be set aside for the consideration of amendment No. 1313.

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

Mr. WARNER. Mr. President, before the Senator brings up this matter—and he has the floor—I wonder if I can clarify this among my colleagues, to try to accommodate others. We have Senator DORGAN to be recognized under the previous unanimous consent. I understand 10 minutes would be sufficient there.

Mr. REED. Fifteen minutes, I believe.

Mr. WARNER. We are anxious to get going, but we will do 15 minutes. I see the Senator from Colorado here. I know the Senator from Arizona and the Senator from South Carolina called within the hour. They need time. Can the Senator advise me as to what his desires might be?

Mr. ALLARD. Mr. President, I think 10 minutes would be fine. I was going to make an argument on an amendment that will be presented. I don't know where it is before us. I do have a couple of amendments I would like to propose. I think for the debate on those two amendments and a floor statement, I probably need 10 minutes.

Mr. WARNER. If the Senator from Colorado could be recognized following Senator DORGAN, I would like to reserve an hour for myself and Senator MCCAIN and Senator LINDSEY GRAHAM.

Mr. REED. Senator LEVIN will need some time, also.

Mr. WARNER. He will certainly get that time. I ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection?

Mr. REED. Would the Senator restate the UC?

Mr. WARNER. I ask unanimous consent that the Senator from Oklahoma continue for about 10 minutes; Senator DORGAN for 15 minutes; the Senator from Colorado for 10 minutes; and 1 hour equally divided between Senators WARNER, MCCAIN, and GRAHAM.

The PRESIDING OFFICER. Is there objection?

Mr. REED. Reserving the right to object, I just want to protect the ability for Senator LEVIN to have time.

Mr. WARNER. He can be recognized following the hour of three of us.

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

The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I ask for the yeas and nays on amendment No. 1313.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1476

Mr. INHOFE. Mr. President, I ask that amendment No. 1313 be set aside for the consideration of amendment No. 1476, which I send to the desk.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE] proposes an amendment numbered 1476.

Mr. INHOFE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To express the sense of Congress that the President should take immediate steps to establish a plan to implement the recommendations of the 2004 Report to Congress of the United States-China Economic and Security Review Commission)

At the end of title XII, insert the following:

SEC. 1205. THE UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION.

(a) FINDINGS.—Congress finds the following:

(1) The 2004 Report to Congress of the United States-China Economic and Security Review Commission states that—

(A) China's State-Owned Enterprises (SOEs) lack adequate disclosure standards, which creates the potential for United States investors to unwittingly contribute to enterprises that are involved in activities harmful to United States security interests;

(B) United States influence and vital long-term interests in Asia are being challenged by China's robust regional economic engagement and diplomacy;

(C) the assistance of China and North Korea to global ballistic missile proliferation is extensive and ongoing;

(D) China's transfers of technology and components for weapons of mass destruction (WMD) and their delivery systems to countries of concern, including countries that support acts of international terrorism, has helped create a new tier of countries with the capability to produce WMD and ballistic missiles;

(E) the removal of the European Union arms embargo against China that is currently under consideration in the European Union would accelerate weapons modernization and dramatically enhance Chinese military capabilities;

(F) China's recent actions toward Taiwan call into question China's commitments to a peaceful resolution;

(G) China is developing a leading-edge military with the objective of intimidating Taiwan and deterring United States involvement in the Strait, and China's qualitative and quantitative military advancements have already resulted in a dramatic shift in the cross-Strait military balance toward China; and

(H) China's growing energy needs are driving China into bilateral arrangements that undermine multilateral efforts to stabilize oil supplies and prices, and in some cases may involve dangerous weapons transfers.

(2) On March 14, 2005, the National People's Congress approved a law that would authorize the use of force if Taiwan formally declares independence.

(b) SENSE OF CONGRESS.—

(1) PLAN.—The President is strongly urged to take immediate steps to establish a plan to implement the recommendations contained in the 2004 Report to Congress of the United States-China Economic and Security Review Commission in order to correct the negative implications that a number of current trends in United States-China relations have for United States long-term economic and national security interests.

(2) CONTENTS.—Such a plan should contain the following:

(A) Actions to address China's policy of undervaluing its currency, including—

(i) encouraging China to provide for a substantial upward revaluation of the Chinese yuan against the United States dollar;

(ii) allowing the yuan to float against a trade-weighted basket of currencies; and

(iii) concurrently encouraging United States trading partners with similar interests to join in these efforts.

(B) Actions to make better use of the World Trade Organization (WTO) dispute settlement mechanism and applicable United States trade laws to redress China's unfair trade practices, including China's exchange rate manipulation, denial of trading and distribution rights, lack of intellectual property rights protection, objectionable labor standards, subsidization of exports, and forced technology transfers as a condition of doing business. The United States Trade Representative should consult with our trading partners regarding any trade dispute with China.

(C) Actions to encourage United States diplomatic efforts to identify and pursue initiatives to revitalize United States engagement with China's Asian neighbors. The initiatives should have a regional focus and complement bilateral efforts. The Asia-Pacific Economic Cooperation forum (APEC) offers a ready mechanism for pursuit of such initiatives.

(D) Actions by the administration to hold China accountable for proliferation of prohibited technologies and to secure China's agreement to renew efforts to curtail North Korea's commercial export of ballistic missiles.

(E) Actions by the Secretaries of State and Energy to consult with the International Energy Agency with the objective of upgrading the current loose experience-sharing arrangement, whereby China engages in some limited exchanges with the organization, to a more structured arrangement whereby China would be obligated to develop a meaningful strategic oil reserve, and coordinate release of stocks in supply-disruption crises or speculator-driven price spikes.

(F) Actions by the administration to develop a coordinated, comprehensive national policy and strategy designed to meet China's challenge to maintaining United States scientific and technological leadership and competitiveness in the same way the administration is presently required to develop and publish a national security strategy.

(G) Actions to review laws and regulations governing the Committee on Foreign Investment in the United States (CFIUS), including exploring whether the definition of national security should include the potential impact on national economic security as a criterion to be reviewed, and whether the chairmanship of CFIUS should be transferred from the Secretary of the Treasury to a more appropriate executive branch agency.

(H) Actions by the President and the Secretaries of State and Defense to press strongly their European Union counterparts to maintain the EU arms embargo on China.

(I) Actions by the administration to discourage foreign defense contractors from selling sensitive military use technology or weapons systems to China. The administration should provide a comprehensive annual report to the appropriate committees of Congress on the nature and scope of foreign military sales to China, particularly sales by Russia and Israel.

(J) Any additional actions outlined in the 2004 Report to Congress of the United States-China Economic and Security Review Commission that affect the economic or national security of the United States.

Mr. INHOFE. Mr. President, this amendment is similar to one that I am not going to offer that was previously going to be offered, No. 1312. There have been several changes made, so a new number is assigned to it.

Mr. President, in October 2000, Congress established the United States-China Security Economic Review Commission to act as a bipartisan authority on how our relationship with China affects our economy, China's military and weapons proliferation, and our influence in Asia.

For the past 5 years, the Commission has been holding hearings and issuing annual reports to evaluate ''the national security implications of the bilateral trade and economic relationship with the United States and the People's Republic of China.'' Their job is to provide us in Congress with the necessary information to make decisions about the complex situation. However, I fear their reports have gone largely unnoticed.

This has been very disturbing. I have had occasion to give four rather lengthy speeches concerning the recommendations. I will not be redundant, and I certainly will not take the time I took previously, but it is something that is very significant. This was a bipartisan commission, made up of Democrats and Republicans, some Members of Congress, and some former Members of Congress. They came out with recommendations over a period of years.

I found the recommendations of the Commission's 2004 report—this is the most recent approach—objective, necessary, and urgent, and I am offering an amendment to express our support for these viable steps.

This amendment expresses the sense of the Senate that China should, first, reevaluate its manipulated currency level and allow it to float against other currencies. In the Treasury Department's recent report to Congress, China's monetary policies are described as ''highly distortionary and pose a risk to China's economy, its trading partners, and global economic growth.''

Second, the appropriate steps ought to be taken through the World Trade Organization to hold China accountable for its dubious trade practices. Major problem issues, such as intellectual property rights, have yet to be addressed.

Third, the United States should revitalize engagement in the Asian region, broaden our interaction with organizations such as ASEAN, which is the Association of Southeast Asian Nations. Our lack of influence has been demonstrated by the Shanghai Cooperation Organization recently demanding that we set a troop pullout deadline in Afghanistan. This clearly shows we do not have much influence there.

Fourth, the administration ought to hold China accountable for proliferating prohibited technologies. Chinese companies, such as NORINCO, have been sanctioned frequently and yet the Chinese Government refuses to enforce their own nonproliferation agreements.

Fifth, the U.N. should monitor nuclear, biological, and chemical treaties and either enforce these agreements or report them to the Security Council. The United States-China Commission has found that China has undercut the U.N. in many areas, undermining what pressures we have tried to apply on problematic states, such as Sudan and Zimbabwe.

Sixth, the administration ought to review the effectiveness of the one-China policy in relation to Taiwan to reflect the dynamic nature of the situation. The Defense Department's annual report to Congress, released 2 days ago, states that China's military ''sustained buildup affects the status quo in the Taiwan Strait.'' We have been watching this for a number of years. We have also been watching the growth and enhancement of China's conventional military capability. We have known about their nuclear capability for some time. Now we see, as the Senator from Utah was mentioning a few minutes ago, that countries are buying these superior strike vehicles from Russia, such as the SU–30s. China, in one purchase, I understand, bought some 240. One has to stop and think about this. It puts them in the position to have better strike vehicles than we do. Of course, we have seen the buildup, the effect on their relationship in the Taiwan Strait.

Seventh, various energy agencies should encourage China to develop its strategic oil reserve in order to avoid a disastrous economic crisis if oil availability becomes unstable. We have to understand that we have a serious problem in this country with the fact that we are relying upon foreign countries for some 65 percent of the oil we import. We are now starting to compete with China which has that great problem, too.

As one travels around and looks at countries such as Iran, Sudan, Nigeria, and other countries where they are establishing relationships—we have seen what they are doing in Venezuela right now—we have to recognize they are going to be our chief competition in becoming self-sufficient in our ability to fight a war without dependency upon foreign countries.

Eighth, the Committee on Foreign Investment in the United States, called CFIUS, should include national economic security as a criterion for evaluation and the chairmanship to be transferred to a more appropriate chair allowing for increased security precautions.

Right now CFIUS has actually reviewed some 1,500 cases of purchases by foreign countries, and they have only questioned 24. They relented on those and only stopped one. That is 1 out of 1,500. There is something wrong. We see some things that are going on right now, such as Unocal, that have received a lot of publicity. This is a very strong recommendation. In fact, I have a separate resolution that covers just this issue and this alone. It will recommend that the chairmanship be changed from the Secretary of Treasury to the Secretary of Defense.

Ninth, the administration should continue its pressure on the EU to maintain its arms embargo on China. The recent Defense Department report states the EU would not have the capability to monitor and enforce any limits if the arms embargo is lifted.

Tenth, penalties should be placed on foreign contractors who sell sensitive military use technology or weapons system to China from benefiting from U.S. defense-related research development in production programs. What is going on is sales are taking place to China on technology that has been subsidized by the United States. In other words, we are putting ourselves in a situation where our national security would be impaired by our own research for which we have paid.

Eleventh, the administration should also provide a report to Congress on the scope of foreign military sales to China.

Finally, Congress should support the recommendations of the Commission's 2004 report to Congress. Unless our relationship with China is backed up with strong action, they will never take us seriously. We will certainly see more violations of proliferation treaties. It is happening over and over. We are looking at it right now. They continue to manipulate regional global trade through currency undervaluation and other unhealthy practices. They will develop unreliable oil sources and energy alliances with countries that threaten international stability. They will continue to escalate the situation over Taiwan, raising the stakes in a game neither country can win.

In today's world, we see how the unpaid bills of the past come back to haunt us in full. Ignoring these problems is unacceptable.

The United States-China Commission was created to give us in Congress a clear picture about what is going on. They have done their job. It is time for us to do our job.

I repeat, this is a commission that has been working now for 4 years. It is a bipartisan commission. These are specific recommendations. This amendment is a sense of the Senate to follow these recommendations.

This is amendment No. 1476.

AMENDMENT NO. 1312 WITHDRAWN

Mr. INHOFE. Mr. President, I withdraw amendment No. 1312.

The PRESIDING OFFICER. Without objection, amendment No. 1312 is withdrawn.

AMENDMENT NO. 1476

Mr. INHOFE. We are considering amendment No. 1476. I ask for the yeas and nays on amendment No. 1476.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. INHOFE. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, am I now recognized for 15 minutes?

The PRESIDING OFFICER. Yes.

Mr. DORGAN. Mr. President, my colleague has sought to have the yeas and nays on his amendment. Let me do the same. I have two amendments pending. Should there be cloture invoked on this underlying bill, as my colleague from Oklahoma has suggested, I would like my amendments to be considered prior to cloture. I have an amendment No. 1429, which is offered. I ask for the yeas and nays on both of my amendments. Then I will speak on the amendments ever so briefly.

I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENTS NOS. 1426 AND 1429

Mr. DORGAN. Mr. President, I ask that we consider amendment 1429. I previously filed that amendment.

The PRESIDING OFFICER. The Senator has a right to make that the regular order. The amendment is now pending.

Mr. DORGAN. Mr. President, I ask for the yeas and nays on amendment No. 1429.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DORGAN. I ask unanimous consent that the pending amendment be set aside.

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

Mr. DORGAN. Mr. President, I ask unanimous consent that we consider amendment No. 1426, which I previously filed.

The PRESIDING OFFICER. The Senator can make that the regular order. The amendment is now pending.

Mr. DORGAN. Mr. President, I ask for the yeas and nays on amendment No. 1426.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DORGAN. Mr. President, I will briefly describe amendment No. 1426. I thank my colleagues for their cooperation. That amendment one that I described at some length on Friday. It has to do with the joint inquiry of the two Intelligence Committees into the terrorist attacks of September 11, 2001. It has to do with the 28 pages in this joint inquiry that have been redacted and classified as top secret. The American people should see these 28 pages. The chairman and the ranking member of the Intelligence Committee at the time said they believe the American people should see these 28 pages. The Government of Saudi Arabia said the American people deserve to see these 28 pages. This book went to the White House for publication. The White House redacted it and classified it as top secret.

I have read the 28 pages. My colleagues have had an opportunity to read them. My former colleague from Florida, who was chairman of the Senate Intelligence Committee, described the question of whether the hijackers on 9/11—and 15 of the 19 were Saudi citizens—whether the hijackers received support from foreign interests and, if so, what kind of support, which foreign interests. The American people have a right to see this.

I hope the Senate will finally vote on asking the President to declassify these pages and give the American people the right to understand what is in those 28 pages.

Again, the chairman of the Intelligence Committee and the ranking member, a Republican and a Democrat, believed at the time those 28 pages should not have been classified.

I will now turn to amendment No. 1429. It deals with waste, fraud, and abuse in contracting in Iraq, and it deals especially with Halliburton, but not exclusively with Halliburton. I have offered this amendment previously as well.

It is unbelievable to me the billions and billions of dollars being spent. A substantial portion of it is being wasted. We know that, and yet no one seems to care or do much about it.

Let me show some charts, if I may. This is a chart of someone who testified before a policy committee hearing I held. This fellow—you cannot see his face—this fellow in the blue striped shirt testified. He was in Iraq when this picture was taken. This is Saran-wrapped bundles of 100-dollar bills, some millions of dollars in 100-dollar bills. He said in this particular area they often played football with these Saran-wrapped bundles of 100-dollar bills.

What was he doing with bundles of 100-dollar bills? The area where this cash was stored, subcontractors in Iraq were told: Bring a bag because we pay in cash; bring a bag. Show up here and want to get paid for whatever you are doing? Bring a bag because we pay in cash.

Let me talk for a moment about the five hearings we held. We heard about cash transactions that were unrecorded, $9 billion that was unaccounted for. ''Uncle Sam Looks into Meal Bills: Halliburton Refunds $27 Million as Result.'' A company that was a Saudi subcontractor doing business through Halliburton billed the Government for 42,000 meals a day, but they only served 14,000 meals to our troops. Let me say that again. They were charging the Government for 42,000 meals served every day to our troops; they were only serving 14,000 meals.

This was not the first time Halliburton has been questioned about this. This was in February 2004.

Also in February 2004, ''Halliburton Faces Criminal Investigation.''

They focus on efforts to solicit bids that transport fuel to Baghdad. Prices Halliburton charged for that work were substantially higher than the cost of trucking in fuel from Turkey. Pentagon launches criminal investigation for possible fraud.

''Ex-Halliburton Workers Allege Rampant Waste.'' Said one employee: They did not control costs at all. Their motto was do not worry about costs. It is cost plus.

Henry Bunting—who testified, incidentally, before one of our Policy Committee hearings—said that they spent $7,500 a month to rent ordinary vehicles, cars and trucks, when the vehicles could have been rented for less than $2,000 a month through the Internet. He also held up some towels. He said they had purchased monogrammed towels for $7.50—these are hand towels for the troops—that should have cost $2.50. Why $7.50? Because Halliburton wanted their logo on the towels.

Now it is May. In February, they talked about overcharging 42,000 meals when they only served 14,000 meals. Now it is May of last year, 4 months later, and the Pentagon says: We are suspending $159 million in meal charges to Halliburton for feeding soldiers because the fact is they were charging for meals they were not serving.

They are still engaged in the same contract, still cheating, and nobody does a thing about it.

''Millions in U.S. Property Lost.'' Halliburton lost $18.6 million in Government property in Iraq. Auditors could not account for 6,975 items on the ledgers of Halliburton's unit.

''Halliburton is Unable to Prove $1.8 Billion in Work, Pentagon Says.'' This has gone on and on. Has Congress done a thing about it, any oversight hearings? None. Nobody seems to care much.

Let me read from a hearing we held in the Policy Committee, a hearing we held because the oversight committees do not hold these hearings. Let me read what the top civilian in the Corps of Engineers, who is engaged in these contracts and approves these contracts, said. This is a woman named Bunnatine Greenhouse. She rose to the highest level in the Corps of Engineers for civilian employees, and now she is losing her job because she was honest. Here is what she said: I can unequivocally state that the abuse related to

contracts awarded to Halliburton represents the most blatant and improper contract abuse I have witnessed during the course of my professional career.

This courageous lady comes forward to testify to say these things, and now her career pays a price for it because we do not want to upset the good old boy network around here. They want to give a sweetheart deal to a company, suspend the rules, and give a sweetheart deal. They cheat you, cheat you again and again, do not worry about it. Do a little investigation down at the Pentagon, but don't anybody in Congress call attention to it. It would be uncomfortable and embarrassing to somebody.

In 1941, Harry Truman, the Senator from Missouri, served in this Chamber. He was a flinty, tough independent. A member of his own party was in the White House, Franklin Delano Roosevelt. A Democrat in the Senate took on the task of identifying the waste, abuse, and fraud that was occurring in spending on our defense. They held hearing after hearing, and they unearthed a massive amount of fraud, waste, and abuse. I am sure that was uncomfortable for the Democrat in the White House, Franklin Delano Roosevelt, because a Democrat Senator was leading the fight. He did it through the Truman Committee that took a hard look at this kind of fraud and abuse.

My amendment would reestablish a Truman-type committee, with Members of both parties on it. When we are shoving tens of billions of dollars out the door to companies such as Halliburton in sole-source contracts, somebody has to watch the cash register.

We had a fellow named Rory testify recently at the Policy Committee. Again, we are holding hearings only because there are not aggressive oversight hearings held in the rest of the Congress because the majority party worries it would embarrass somebody. So Rory comes to testify. He is running a food service unit for Halliburton in Iraq and he says: We are getting food that is in some cases over a year expired on the date stamp for the food. What do they do? They are told: Feed it to the troops.

We get food that comes in on a convoy that has been attacked. What do they do? The supervisors say go into those trucks and remove the shrapnel and remove the bullets and save the bullets as souvenirs for the Halliburton supervisors and feed the food to the troops.

Yes, this fellow ran one of those agencies. Here is what he said: When I was an employee for Halliburton and they were doing this sort of thing, we were told if a Government auditor comes around, do not dare talk to the Government auditor. If you do, one of two things will happen: You will either be sent to a fire zone in Iraq, one under attack, one with significantly more danger than where you work now, or you will be fired summarily. Do not talk to Government auditors.

The question is: When will someone care enough to begin to take a hard look at the money we are spending? Nearly $200 billion has gone out of here, all of it emergency funding, none of it paid for. A substantial portion of that goes to contractors and much of it sole-source contractors, no-bid and cost-plus contracts. The American taxpayers, in my judgment, are paying the price for very substantial abuse and very substantial waste and fraud.

The moment someone comes to the Senate floor and mentions the word ''Halliburton,'' they say: You are attacking the Vice President. I am not. The Vice President used to run Halliburton Corporation. He does not and has not since the year 2000. None of the examples I have cited have happened prior to that time, they have happened since that time. This is not the Vice President's corporation. It is not on his watch as CEO of Halliburton. But these are sweetheart contracts, sole-source contracts.

Fifty thousand pounds of nails are ordered to the country of Iraq, and they are the wrong size. So if one wants some nails, they are laying on the ground somewhere there in the sand, just another piece of waste. Seventy-five hundred dollars to rent a vehicle for a month. Buy new trucks for $85,000, get a flat tire, leave them by the roadside to be trashed. Buy new trucks for $85,000 and have a fuel pump plugged, leave them by the roadside to be trashed and looted. All of that comes from testimony from people who used to work for Halliburton. They have come before our Policy Committee and told these stories that describe outrageous amounts of waste, fraud, and abuse. The question is: Why does no one in this Congress seem to care? My hope is that this Congress would agree to create a Truman-type committee, a committee of Republicans and Democrats that would take a hardnosed, flinty look at how money is being spent.

How much time remains?

The PRESIDING OFFICER. One minute.

Mr. DORGAN. Mr. President, some of my colleagues have said they would like a vote on their amendments prior to cloture. My hope is that we will not have a cloture vote, by the way. I think the best Defense authorization bills that we have had in the Congress have been those that have been debated on the Senate floor for a week or two where we have had a substantial opportunity to think through and debate significant and difficult issues. So I would hope we will not have a cloture vote tomorrow. If in fact we do, I will join my colleague from Oklahoma and others who suggest that I would like a vote prior to cloture because his amendments and mine would fall postcloture. That is one of the dilemmas of cloture.

Clearly, my amendment deals with something that is very important, that attends to the money we are spending on defense and the money we are going to authorize to be spent on defense, but because of the way it is written and the subject, it will fall postcloture. For that reason, I hope we will not invoke cloture tomorrow.

I thank my colleagues for the time and hope they will seriously consider both amendments I have described today.

Mr. WARNER. I thank our colleague. It will be given careful consideration. It relates to an important subject matter.

I understand the Senator from Colorado has about 10 minutes, followed by Senators McCAIN, GRAHAM, and WARNER for 1 hour.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I thank the chairman for yielding me 10 minutes.

There are three amendments that I have offered and I would like to ask for their consideration, and then I wish to make some comments relating to one of them and then finally some comments on the Levin missile defense amendment offered earlier today.

AMENDMENT NO. 1419

I ask unanimous consent that we set aside the pending amendment, and I ask for the consideration of amendment No. 1419.

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

Mr. ALLARD. I ask for the yeas and nays on that amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1383

Mr. ALLARD. Mr. President, I would ask unanimous consent to lay aside that amendment, and I ask for the consideration of amendment No. 1383. That amendment has been previously filed.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD] proposes an amendment numbered 1383.

Mr. ALLARD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To establish a program for the management of post-project completion retirement benefits for employees at Department of Energy project completion sites)

On page 378, between lines 10 and 11, insert the following:

SEC. 3114. MANAGEMENT OF POST-PROJECT COMPLETION RETIREMENT BENEFITS FOR EMPLOYEES AT DEPARTMENT OF ENERGY PROJECT COMPLETION SITES.

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Energy shall carry out a program under which the Secretary shall use competitive procedures to enter into an agreement with a contractor for the plan sponsorship and program management of post-project completion retirement benefits for eligible employees at each

Department of Energy project completion site.

(2) REQUIREMENT OF NO REDUCTION IN TOTAL VALUE OF RETIREMENT BENEFITS.—The total value of post-project completion retirement benefits provided to eligible employees at a Department of Energy project completion site may not be reduced under the program required under paragraph (1) without the specific authorization of Congress.

(b) AGREEMENT FOR BENEFITS MANAGEMENT.—

(1) IN GENERAL.—The Secretary of Energy shall, in accordance with procurement rules and regulations applicable to the Department of Energy, enter into the agreement described in subsection (a) not later than 90 days after the date of the physical completion date for the Department of Energy project completion site covered by the agreement.

(2) TERMS OF AGREEMENT.—The agreement under this section shall—

(A) provide for the plan sponsorship and program management of post-project completion retirement benefits;

(B) fully describe the post-project completion retirement benefits to be provided to employees at the Department of Energy project completion site; and

(C) require that the Secretary reimburse the contractor for the costs of plan sponsorship and program management of post-project completion retirement benefits.

(3) RENEWAL OF AGREEMENT.—The agreement shall be subject to renewal every 5 years until all the benefit obligations have been met.

(c) REPORT.—

(1) IN GENERAL.—Not later than 30 days after signing of the agreement described in subsection (a), the Secretary of Energy shall submit to the congressional defense committees a report on the program established under such subsection.

(2) CONTENTS.—The report submitted under paragraph (1) shall describe—

(A) the costs of plan sponsorship and program management of post-project completion retirement benefits;

(B) the funding profile in the Department of Energy's future year budget for the plan sponsorship and program management of post-project completion retirement benefits under the agreement entered into under subsection (b);

(C) the amount of unfunded accrued liability for eligible workers at the Department of Energy project completion site; and

(D) the justification for awarding the agreement entered into under subsection (b) to the selected contractor.

(d) DEFINITIONS.—In this section:

(1) PHYSICAL COMPLETION DATE.—The term ''physical completion date'' means—

(A) the date of physical completion or achievement of a similar milestone defined by or calculated in accordance with the terms of the completion project contract; or

(B) if the completion project contract specifies no such date, the date declared by the site contractor and accepted by the Department of Energy that the site contractor has completed all services required by the project completion contract other than close-out tasks and any other tasks excluded from the contract.

(2) DEPARTMENT OF ENERGY PROJECT COMPLETION SITE.—The term ''Department of Energy project completion site'' means a site, or a project within a site, in the Department of Energy's nuclear weapons complex that has been designated by the Secretary of Energy for closure or completion without any identified successor contractor.

(3) POST-PROJECT COMPLETION RETIREMENT BENEFITS.—The term ''post-project completion retirement benefits'' means those benefits provided to eligible employees at a Department of Energy project completion site as of the physical completion date through collective bargaining agreements, projects, or contracts for work scope, including pension, health care, life insurance benefits, and other applicable welfare benefits.

(4) ELIGIBLE EMPLOYEES.—The term ''eligible employees'' includes—

(A) any employee who—

(i) was employed by the Department of energy or by contract or first or second tier subcontract to perform cleanup, security, or administrative duties or responsibilities at a Department of Energy project completion site; and

(ii) has met applicable eligibility requirements for post-project completion retirement benefits as of the physical completion date; and

(B) any eligible dependant of such an employee, as defined in the post-project completion retirement benefits plan documents.

(5) UNFUNDED ACCRUED LIABILITY.—The term ''unfunded accrued liability'' means, with respect to eligible employees, the accrued liability, as determined in accordance with an actuarial cost method, that exceeds the present value of the assets of a pension plan and the aggregate projected life-cycle health care costs.

(6) PLAN SPONSORSHIP AND PROGRAM MANAGEMENT OF POST-PROJECT COMPLETION RETIREMENT BENEFITS.—The term ''plan sponsorship and program management of post-project completion retirement benefits'' means those duties and responsibilities that are necessary to execute, and are consistent with, the terms and legal responsibilities of the instrument under which the post-project completion retirement benefits are provided to employees at a Department of Energy project completion site.

AMENDMENT NO. 1506

Mr. ALLARD. Mr. President, I ask unanimous consent to lay that amendment aside, and I ask for the consideration of amendment No. 1506.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD], for himself and Mr. SALAZAR, proposes an amendment No. 1506.

Mr. ALLARD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To authorize the Secretary of Energy to purchase certain essential mineral rights and resolve natural resources damage liability claims)

On page 378, between lines 10 and 11, insert the following:

SEC. 3114. ROCKY FLATS ENVIRONMENTAL TECHNOLOGY SITE.

(a) DEFINITIONS.—In this section:

(1) ESSENTIAL MINERAL RIGHT.—The term ''essential mineral right'' means a right to mine sand and gravel at Rocky Flats, as depicted on the map.

(2) FAIR MARKET VALUE.—The term ''fair market value'' means the value of an essential mineral right, as determined by an appraisal performed by an independent, certified mineral appraiser under the Uniform Standards of Professional Appraisal Practice.

(3) MAP.—The term ''map'' means the map entitled ''Rocky Flats National Wildlife Refuge'', dated July 25, 2005, and available for inspection in appropriate offices of the United States Fish and Wildlife Service and the Department of Energy.

(4) NATURAL RESOURCE DAMAGE LIABILITY CLAIM.—The term ''natural resource damage liability claim'' means a natural resource damage liability claim under subsections (a)(4)(C) and (f) of section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) arising from hazardous substances releases at or from Rocky Flats that, as of the date of enactment of this Act, are identified in the administrative record for Rocky Flats required by the National Oil and Hazardous Substances Pollution Contingency Plan prepared under section 105 of that Act (42 U.S.C. 9605).

(5) ROCKY FLATS.—The term ''Rocky Flats'' means the Department of Energy facility in the State of Colorado known as the ''Rocky Flats Environmental Technology Site''.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(7) TRUSTEES.—The term ''Trustees'' means the Federal and State officials designated as trustees under section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)).

(b) PURCHASE OF ESSENTIAL MINERAL RIGHTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, such amounts authorized to be appropriated under subsection (c) shall be available to the Secretary to purchase essential mineral rights at Rocky Flats.

(2) CONDITIONS.—The Secretary shall not purchase an essential mineral right under paragraph (1) unless—

(A) the owner of the essential mineral right is a willing seller; and

(B) the Secretary purchases the essential mineral right for an amount that does not exceed fair market value.

(3) LIMITATION.—Only those funds authorized to be appropriated under subsection (c) shall be available for the Secretary to purchase essential mineral rights under paragraph (1).

(4) RELEASE FROM LIABILITY.—Notwithstanding any other law, any natural resource damage liability claim shall be considered to be satisfied by—

(A) the purchase by the Secretary of essential mineral rights under paragraph (1) for consideration in an amount equal to $10,000,000;

(B) the payment by the Secretary to the Trustees of $10,000,000; or

(C) the purchase by the Secretary of any portion of the mineral rights under paragraph (1) for—

(i) consideration in an amount less than $10,000,000; and

(ii) a payment by the Secretary to the Trustees of an amount equal to the difference between—

(I) $10,000,000; and

(II) the amount paid under clause (i).

(5) USE OF FUNDS.—

(A) IN GENERAL.—Any amounts received under paragraph (4) shall be used by the Trustees for the purposes described in section 107(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(1)), including—

(i) the purchase of additional mineral rights at Rocky Flats; and

(ii) the development of habitat restoration projects at Rocky Flats.

(B) CONDITION.—Any expenditure of funds under this paragraph shall be made jointly by the Trustees.

(C) ADDITIONAL FUNDS.—The Trustees may use the funds received under paragraph (4) in

conjunction with other private and public funds.

(6) EXEMPTION FROM NATIONAL ENVIRONMENTAL POLICY ACT.—Any purchases of mineral rights under this subsection shall be exempt from the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(7) ROCKY FLATS NATIONAL WILDLIFE REFUGE.—

(A) TRANSFER OF MANAGEMENT RESPONSIBILITIES.—The Rocky Flats National Wildlife Refuge Act of 2001 (16 U.S.C. 668dd note; Public Law 107–107) is amended—

(i) in section 3175—

(I) by striking subsections (b) and (f); and

(II) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(ii) in section 3176(a)(1), by striking ''section 3175(d)'' and inserting ''section 3175(c)''.

(B) BOUNDARIES.—Section 3177 of the Rocky Flats National Wildlife Refuge Act of 2001 (16 U.S.C. 668dd note; Public Law 107–107) is amended by striking subsection (c) and inserting the following:

''(c) COMPOSITION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the refuge shall consist of land within the boundaries of Rocky Flats, as depicted on the map—

''(A) entitled 'Rocky Flats National Wildlife Refuge';

''(B) dated July 25, 2005; and

''(C) available for inspection in the appropriate offices of the United States Fish and Wildlife Service and the Department of Energy.

''(2) EXCLUSIONS.—The refuge does not include—

''(A) any land retained by the Department of Energy for response actions under section 3175(c);

''(B) any land depicted on the map described in paragraph (1) that is subject to 1 or more essential mineral rights described in section 3114(a) of the National Defense Authorization Act for Fiscal Year 2006 over which the Secretary shall retain jurisdiction of the surface estate until the essential mineral rights—

''(i) are purchased under subsection (b) of that Act; or

''(ii) are mined and reclaimed by the mineral rights holders in accordance with requirements established by the State of Colorado; and

''(C) the land depicted on the map described in paragraph (1) on which essential mineral rights are being actively mined as of the date of enactment of the National Defense Authorization Act for Fiscal Year 2006 until—

''(i) the essential mineral rights are purchased; or

''(ii) the surface estate is reclaimed by the mineral rights holder in accordance with requirements established by the State of Colorado.

''(3) ACQUISITION OF ADDITIONAL LAND.—Notwithstanding paragraph (2), upon the purchase of the mineral rights or reclamation of the land depicted on the map described in paragraph (1), the Secretary shall—

''(A) transfer the land to the Secretary of the Interior for inclusion in the refuge; and

''(B) the Secretary of the Interior shall—

''(i) accept the transfer of the land; and

''(ii) manage the land as part of the refuge.''.

(c) FUNDING.—Of the amounts authorized to be appropriated to the Secretary for the Rocky Flats Environmental Technology Site for fiscal year 2006, $10,000,000 shall be made available to the Secretary for the purposes described in subsection (b).

Mr. ALLARD. Mr. President, No. 1506 deals with the mineral rights at Rocky Flats. This basically will provide for the Secretary to purchase these mineral rights. There is money that has been provided for this in previous legislation and that is pending. This allows for the transfer of those mineral rights on Rocky Flats. It is based on the owner of the mineral rights being willing to sell.

In 2001, I successfully inserted a provision in the National Defense authorization bill that authorized the creation of the Rocky Flats National Wildlife Refuge. Under this legislation, the Department of Energy was required to transfer most of the Rocky Flats Environmental Technology Site to the Department of Interior for the purposes of creating a wildlife refuge to preserve Colorado's rare Front Range habitat.

Earlier, 2 months ago, the Departments of Energy and Interior signed a memorandum of understanding that stipulated how and when the Department of Energy would transfer the management of most of the Rocky Flats Environmental Technology Site to the Department of Interior. However, this memorandum of understanding was incomplete. It completely deferred the issue of the disruptive surface mining of privately owned mineral rights that is occurring on the site until later this year. This deferral did not meet the legislation requirement under the Rocky Flats National Wildlife Refuge Act and represented a critical impediment to the closure of Rocky Flats.

The Department of Interior contended that surface mining such as that now occurring at Rocky Flats is fundamentally contrary to its refuge management goals, and makes the achievement of refuge purposes on those lands impossible.

To better understand this issue, I requested that the Department of Energy hire an independent contractor to conduct an appraisal on the value of the mineral rights. The independent contractor determined the owners and provided a preliminary cost estimate as to the fair market value of those mineral rights containing sand and gravel.

After the appraisal was completed, my staff personally contacted each mineral rights owner. I wanted to see if they would be interested in selling if they were offered money for the fair market value of the mineral rights. I also reassured them that the owners would not be forced to sell if they didn't want to.

Shortly thereafter, it was brought to my attention that the purchase of mineral rights could be included as part of a comprehensive natural resource damage settlement. I am pleased to announce that the State of Colorado, my colleague from Colorado, Senator SALAZAR, and I have worked out legislation providing for such an arrangement. I am confidant that this arrangement will be acceptable to the Department of Energy and the Department of Interior.

Under the amendment I am introducing today, the Secretary of Energy will be required to purchase essential mineral rights necessary to transition Rocky Flats to a national wildlife refuge.

The Secretary can only purchase these mineral rights once the following conditions are met: (1) The owner of the minieral right is a willing seller; (2) the Secretary purchases the mineral right at fair market value; and (3) the Trustees for Rocky Flats release the Department from its natural resource damage liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, CERCLA.

Also included in this legislation is a provision that states that if the owner of the mineral right refuses to sell, the Secretary of Energy may satisfy the Department's natural resource liability obligation by paying the trustees of the site an amount equal to the fair market value of the mineral right owned by the unwilling seller.

I believe this amendment makes too much sense for us to pass up. We have winners, winners, and winners. It is certainly a win for the State of Colorado—the State mechanism that would provide more dollars for Colorado than most likely would have been gained through the normal natural resources damages settlement process. The owners of the mineral rights win because they now have an opportunity to sell their mineral rights at fair market value, a possibility that never existed before. The Department of Energy wins because it is able to pay off its natural resource damage liabilities that would have arisen under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The Department of Interior wins because this legislation would remove the last impediment to the memorandum of understanding between Interior and the Department of Energy so that Interior can move forward with creating a wildlife refuge at Rocky Flats. Most importantly, the people of Colorado win because now they will be able to enjoy the pristine beauty and splendor of the Rocky Mountain's Front Range through the Rocky Flats National Wildlife Refuge. Hundreds of acres of rare xeric tallgrass prairie will be preserved. The natural wildlife in the refuge will be protected.

As I said, this is a win-win proposal. Everyone gains. I urge my colleagues to support my amendment.

AMENDMENT NO. 1492

I rise in opposition to the Levin missile defense amendment. This amendment eliminates $30 million—there has been $50 million requested—for long-lead funding for ground-based interceptor missiles 31–40 and $20 million for associated silo construction. The $50 million would be used to plus-up the Cooperative Threat Reduction Program which is already fully funded at $415.5 million, with an additional $1.6 billion for DOE nonproliferation programs.

The CTR currently has $500 million in unobligated funds for 2005. So I would hope we could keep these provisions in the current authorization bill.

DOD already directed a $1 billion reduction in MDA funding in fiscal year 2006 and $5 billion in 2006 through 2011. To add upon that an additional reduction in long-term funding puts this program in jeopardy. We need to have those long-term plans in place, funded, because they are very important to the security of this Nation.

This amendment would unnecessarily delay the fielding of ground-based interceptors in 2009 and 2010. We simply cannot afford such a delay because the threat is ''real and imminent,'' as General Cartwright has testified. The CIA and DIA assess North Korea as ready to flight test an ICBM that can reach the United States, and Iran may have such a capability in 2015, according to the DIA.

A production break, by the way, would cost $270 million to restart, so there is a cost in delaying these funds.

Despite recent test failures, the technology is mature enough to proceed with fielding even though we continue to test and improve reliability.

STRATCOM, the Director of Operational Tests and Evaluation, and the Independent Review Team agree that the ground-based midcourse defense test bed has some limited capability. The Independent Review Team also found no fundamental design flaws with the GMD system, and that we need to concentrate on manufacturing quality control.

I happen to be in favor of more operational testing. The MDA is pursuing a prudent approach by delaying further testing until reliability issues are addressed. Four flight tests were scheduled for 2006, starting in October and ending with an intercept next September. Also, the SASC adopted the Nelson amendment that directs increasing cooperation between independent testing agencies and MDA, and calls for more operationally realistic testing that will be evaluated by the Director of Operational Test and Evaluation.

I have been out to visit the southern parts of the test bed. I am convinced our technology is there. I am convinced the threat is real. As a result, I think we need to move forward and we need to move forward in a long-term way so the manufacturers who provide the missiles and technology for the program have some reliable source of revenue as we move forward. We should not interrupt the program. The agencies that are responsible for administering the program need to have that funding there so they can continue to plan in the future for the defense of this country.

There is an emerging threat. There is a threat that continues to emerge, I would say, from North Korea. I think we have to be concerned about Iran.

I have always been a strong proponent of missile defense. I think this particular amendment that Senator LEVIN has introduced tends to make it difficult for us to meet our long-range goals, to protect the borders of this country, and protect the American people from some type of missile attack. In today's environment, it is important that we have that insurance for the future of America.

I wanted to make the comments on the Levin amendment because I think it is ill-advised in light of the state of the world today.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. ALLARD. Mr. President, I yield the remainder of my time to the chairman.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, under the unanimous consent requirement, Senator MCCAIN, Senator GRAHAM, and I are now recognized for an hour. I ask our distinguished colleague from Arizona—I would like to amend that to allow Senator SALAZAR to go for 2 minutes. I request that unanimous consent.

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

The Senator from Colorado is recognized.

AMENDMENT NO. 1506

Mr. SALAZAR. Mr. President, I thank my friend from Arizona, also my friend from Virginia, and my friend from Rhode Island for agreeing to let me speak for a couple of minutes on this amendment.

The amendment both Senator ALLARD and I are proposing, amendment No. 1506, is very important as we move forward with the Department of Energy complex. We have created a great model for the rest of our country as to how we clean up the remnants of the Cold War. How we do this in an appropriate fashion to bring the cleanup of Rocky Flats to completion is a very important part of our Nation's efforts to clean up these facilities.

Amendment No. 1506 is a great step in the right direction because it will help us bring to conclusion, in a final form, the cleanup at Rocky Flats. I commend my colleague from Colorado, Senator ALLARD, for his leadership on this effort over the years. I also commend him and both of our staffs for having worked out the issues with the Department of Energy and Department of Interior over the weekend.

I also want to inform my colleagues that I have had a hold on four nominees who had been passed out of the committee, out of the Energy Committee. I am lifting the holds on Jill Sigal, David Hill, James Rispoli, and Thomas Weimer so that they can move forward and hopefully be confirmed by the Senate before we get into the August recess.

I yield the remainder of my time.

Mr. WARNER. Mr. President, we now turn to the three Senators. I would like to take 1 minute to address both Colorado Senators.

I followed with interest your amendments. I do hope we now have on the record a clear statement of support by the Secretary of Energy. Am I correct in that?

Mr. ALLARD. As I have discussed with the Chairman's staff—I assume you are talking about the amendment on the mineral rights.

Mr. WARNER. Yes.

Mr. ALLARD. That provision is before the OMB, so I cannot publicly state their position until we get a decision back from OMB.

Mr. WARNER. I thank the Senator.

Now, Mr. President, we would like to commence the 1 hour. I yield the floor so Senator MCCAIN can gain recognition. But I would want to say this is a subject that is enormously important. I commend Senator MCCAIN and Senator GRAHAM. It merits the full attention and hopefully the support of the Senate. These are issues that go far beyond just the question of detention. It goes to the perception of the great Nation of which we are privileged to be citizens, the United States of America, as it relates to how we treat those people who come into our custody in the course of defending freedom, on battle fields, and elsewhere in the world. I have such great respect for Senator MCCAIN.

I yield the floor.

AMENDMENT NO. 1557, AS MODIFIED

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that I be allowed to modify my amendment No. 1557, which is at the desk.

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

Mr. MCCAIN. Mr. President, I ask the pending amendment be set aside, and I call up amendment No. 1557, which is at the desk. I ask the clerk continue the reading of the amendment because it is short and important.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, Mr. WARNER, Mr. GRAHAM, and Ms. COLLINS, proposes an amendment numbered 1557, as modified:

At the end of subtitle G of title X, add the following:

SEC. 1073. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

(a) LIMITATION ON INTERROGATION TECHNIQUES.—

(1) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

(2) APPLICABILITY.—Paragraph (1) shall not apply to with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

Mr. MCCAIN. Mr. President, I asked that amendment be read because there may be various interpretations of what this amendment is and what it means. What it means to the sponsors—and I am grateful to my friend, Senator WARNER, the distinguished chairman of the committee, and Senator GRAHAM and others, including Senator COLLINS and others who have supported this. Basically, it says the U.S. Army Field Manual on Intelligence Interrogation shall be the document that governs interrogation of prisoners who are under Department of Defense custody.

Some of us may like to see this expanded to treatment of prisoners who are under custody of different agencies of Government. This applies to the Department of Defense.

Before I proceed further, I ask my friend from Virginia—as he knows, we have two amendments. One is this one which we have just read, and the other one concerning cruel and inhumane treatment, which we are sort of still working on. Is it the desire of the Chairman we take up both amendments at this time?

Mr. WARNER. Mr. President, I suggest we take up the other one—you and I have discussed it—as soon as the other one is completed because I am a cosponsor on the one that is now pending.

Mr. MCCAIN. I thank the distinguished chairman. For the information of my colleagues, the second amendment, which would be before the Senate for consideration at a different time, basically says that cruel and inhumane treatment will not be inflicted upon any prisoner, and we would adhere to the Geneva Conventions as well as other international agreements concerning the treatment of prisoners.

But on this issue it says this amendment would prohibit cruel and inhumane and degrading treatment of prisoners in the detention of the U.S. Government, and it is basically fairly straightforward and simple, as I read.

The Army Field Manual and its various editions have served America well, through wars against both regular and irregular foes. The manual embodies the values Americans have embraced for generations while preserving the ability of our interrogators to extract critical intelligence from ruthless foes. Never has this been more important than today in the midst of the war on terror.

I think we all agree to fight terrorism we must obtain intelligence. But we have to ensure that it is reliable and acquired in a way that is humane. To do otherwise not only offends our national morals but undermines our efforts to protect the Nation's security.

Abuse of prisoners harms—harms, not helps—us in the war on terror because inevitably these abuses become public. When they do, the cruel actions of a few darken the reputation of our honorable country in the eyes of millions. Mistreatment of our prisoners also endangers U.S. servicemembers who might be captured by the enemy—if not in this war, then in the next.

I want to emphasize to some of my friends who say that we should do anything that is necessary to extract intelligence, No. 1, torture doesn't work; No. 2, if extraneous or extraordinary actions have to be taken—and there may be cases, and we will get into this in the next amendment, where someone has information that it is believed poses an immediate threat to the United States—then I would suppose that it would be entirely appropriate, under law, that the President of the United States could make that judgment and take whatever actions are necessary. In the meantime, the Army Field Manual authorizes interrogation techniques that are proven effective in extracting lifesaving information from the most hardened prisoners. It also recognizes that torture and cruel treatment are ineffective methods because they induce prisoners to say what their interrogators want to hear, even if it is not true.

It is consistent with our laws and, most importantly, our values. Our values are different from those of our enemies. When colleagues or others may come on this floor and say: Well, they do it, others do it, al-Qaida does it, other nations in the world do it, what differentiates us, the United States of America, from other countries is the fact that we do not. We do not abuse human rights. We do not do it. I would argue the pictures, terrible pictures from Abu Ghraib, harmed us—not only in the Arab world, which is an area of great concern but it also harmed us dramatically amongst friendly nations, the Europeans, many of our allies.

Of course, they were appalled. Of course, we were all appalled. As we go through this later on, there were interesting exchanges between the civilian general counsel in the Pentagon and the military judge advocate general's—members of the judge advocate general, who were deeply concerned about regulations that were proposed for adoption, and exhibited very serious and fundamental concerns. For a short period of time, unfortunately, those objections by the uniform lawyers in the Pentagon were overruled, and we went through a period of time—thank God only a few months—where interrogation techniques were allowed which were then repealed, I am happy to say.

Our friends in London and elsewhere find themselves confronting the same evil that we do. Preserving the common values we hold dear is more important than ever. We fight not just to preserve our lives and liberties but our morals, and we will never allow the terrorists to take those from us. In this war that we must win—that we will win—we should never fight evil with evil.

As I said, the amendment I am offering would establish the Army Field Manual as the standard for interrogation of all detainees held in Department of Defense custody. The manual has been developed by the executive branch for its own uses, with a new edition written to take into account the needs of the war on terror for the new classified annexes due to be issued soon.

The advantage of setting a standard for interrogation based on the field manual is to cut down on the significant level of confusion that still exists with respect to which interrogation techniques are allowed. Two weeks ago, the Committee on Armed Services held hearings, under the chairmanship of Senator LINDSEY GRAHAM, with a slew of high-level Defense Department officials from regional commanders to judge advocate generals from the various branches to the Department's deputy general counsel.

A chief topic of discussion was what specific interrogation techniques are permitted, in what environment, with which DOD detainees, by whom and when. The answers included a whole lot of confusion. We got a bunch of contradictory answers. Several: I would have to take a look at that. A few: Let me get back to you.

Let's think about that for a second. If at the highest level of the Pentagon they do not know what exact techniques are allowed and what aren't, what is going on in the prisons? What is going on with the soldiers, the sergeant, the corporal, those who are supposed to do the actual interrogations? What we are trying to do is make sure there are clear and exact standards set for interrogation of prisoners which have held for other wars and are now being updated to take into consideration the kind of war that we are in.

Confusion results in the kind of messes that once again could give America a black eye around the world. We need a clear, simple, and consistent standard. We will have it in the Army Field Manual on interrogation. That is not my opinion but that of many more distinguished military legal minds than mine.

I received a letter recently from a group of people, 11 former high-ranking military officers, including RADM John Hutson and RADM Don Guter, who each served as the Navy's top JAG, and Claudia Kennedy, who was Deputy Chief of Staff for Army Intelligence. These and other distinguished officers believe that the abuses took place in part because our soldiers received ambiguous instructions which, in some cases, authorized treatment that went beyond what the Field Manual allows and that had the Manual been followed across the board we could have avoided the prisoner abuse scandal.

I am not sure we could have, Mr. President, but wouldn't any of us have done whatever we could to have prevented that?

I ask unanimous consent this letter, dated July 22, 2005, be printed in the RECORD.

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

JULY 22, 2005.

DEAR SENATOR MCCAIN: We strongly support your proposed amendments to the Defense Department Authorization bill concerning detainee policy, including requiring all interrogations of detainees in DOD custody to conform to the U.S. Army's Field Manual on Intelligence Interrogation (FM 34–52), and prohibiting the use of torture and cruel, inhuman and degrading treatment by any U.S. government agency.

The abuse of prisoners hurts America's cause in the war on terror, endangers U.S. service members who might be captured by the enemy, and is anathema to the values Americans have held dear for generations. For many years, those values have been embodied in the Army Field Manual. The Manual applies the wisdom and experience gained by military interrogators in conflicts against both regular and irregular foes. It authorizes techniques that have proven effective in extracting life-saving information from the most hardened enemy prisoners. It also recognizes that torture and cruel treatment are ineffective methods, because they induce prisoners to say what their interrogators want to hear, even if it is not true, while bringing discredit upon the United States.

It is now apparent that the abuse of prisoners in Abu Ghraib, Guantanamo and elsewhere took place in part because our men and women in uniform were given ambiguous instructions, which in some cases authorized treatment that went beyond what was allowed by the Army Field Manual. Administration officials confused matters further by declaring that U.S. personnel are not bound by longstanding prohibitions of cruel treatment when interrogating non-U.S. citizens on foreign soil. As a result, we suddenly had one set of rules for interrogating prisoners of war, and another for ''enemy combatants;'' one set for Guantanamo, and another for Iraq; one set for our military, and another for the CIA. Our service members were denied clear guidance, and left to take the blame when things went wrong. They deserve better than that.

The United States should have one standard for interrogating enemy prisoners that is effective, lawful, and humane. Fortunately, America already has the gold standard in the Army Field Manual. Had the Manual been followed across the board, we would have been spared the pain of the prisoner abuse scandal. It should be followed consistently from now on. And when agencies other than DOD detain and interrogate prisoners, there should be no legal loopholes permitting cruel or degrading treatment.

The amendments proposed by Senator McCain would achieve these goals while preserving our nation's ability to fight the war on terror. They reflect the experience and highest traditions of the United States military. We urge the Congress to support this effort.

General Joseph Hoar (Ret. USMC).

Lieutenant General Robert G. Gard, Jr. (Ret. USA).

Lieutenant General Claudia J. Kennedy (Ret. USA).

Major General Melvyn Montano (Ret. USAF Nat. Guard).

Rear Admiral Don Guter (Ret. USN).

Rear Admiral John D. Hutson (Ret. USN).

Brigadier General David M. Brahms (Ret. USMC).

Brigadier General James Cullen (Ret. USA).

Brigadier General Evelyn P. Foote (Ret. USA).

Brigadier General David R. Irvine (Ret. USA).

Brigadier General Richard O'Meara (Ret. USA).

Ambassador Douglas ''Pete'' Peterson.

Former Vietnam POW Commander Frederick C. Baldock (Ret. USN).

Former Vietnam POW Commander Phillip N. Butler (Ret. USN).

General Joseph Hoar (Ret. USMC)—General Hoar served as Commander-in-Chief, U.S. Central Command. After the first Gulf War, General Hoar led the effort to enforce the naval embargo in the Red Sea and the Persian Gulf, and to enforce the no-fly zone in the south of Iraq. He oversaw the humanitarian and peacekeeping operations in Kenya and Somalia and also supported operations in Rwanda, and the evacuation of U.S. civilians from Yemen during the 1994 civil war. He was the Deputy for Operations for the Marine Corps during the Gulf War and served as General Norman Schwarzkopf's Chief of Staff at Central Command. General Hoar currently runs a consulting business in California.

Lt. General Robert G. Gard, Jr. (Ret. USA)—General Gard is a retired Lieutenant General who served in the United States Army; his military assignments included combat service in Korea and Vietnam. He is currently a consultant on international security and president emeritus of the Monterey Institute for International Studies.

Lieutenant General Claudia J. Kennedy (Ret. USA)—General Kennedy is the first and only woman to achieve the rank of three-star general in the United States Army. Kennedy served as Deputy Chief of Staff for Army Intelligence, Commander of the U.S. Army Recruiting Command, and as Commander of the 703d military intelligence brigade in Kunia, Hawaii.

Major General Melvyn Montano (Ret. USAF Nat. Guard)—General Montano was the adjutant general in charge of the National Guard in New Mexico from 1994 to 1999. He served in Vietnam and was the first Hispanic Air National Guard officer appointed as an adjutant general in the country.

Rear Admiral Don Guter (Ret. USN)—Admiral Guter served as the Navy's Judge Advocate General from 2000 to 2002. Admiral Guter is currently CEO of Vinson Hall Corporation/Executive Director of the Navy Marine Coast Guard Residence Foundation in McLean, Virginia.

Rear Admiral John D. Hutson (Ret. USN)—Admiral John D. Hutson served as the Navy's Judge Advocate General from 1997 to 2000. Admiral Hutson now serves as President and Dean of the Franklin Pierce Law Center in Concord, New Hampshire.

Brigadier General David M. Brahms (Ret. USMC)—General Brahms served in the Marine Corps from 1963–1988. He served as the Marine Corps' senior legal adviser from 1983 until his retirement in 1988. General Brahms currently practices law in Carlsbad, California and sits on the board of directors of the Judge Advocates Association.

Brigadier General James Cullen (Ret. USA)—General Cullen is a retired Brigadier General in the United States Army Reserve Judge Advocate General's Corps and last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. He currently practices law in New York City.

Brigadier General Evelyn P. Foote (Ret. USA)—General Foote was Commanding General of Fort Belvoir in 1989. She was recalled to active duty in 1996 to serve as Vice Chair of the Secretary of the Army's Senior Review Panel on Sexual Harassment. She is President of the Alliance for National Defense, a non-profit organization.

Brigadier General David R. Irvine (Ret. USA)—General Irvine is a retired Army Reserve strategic intelligence officer and taught prisoner interrogation and military law for 18 years with the Sixth Army Intelligence School. He last served as Deputy Commander for the 96th Regional Readiness Command, and currently practices law in Salt Lake City, Utah.

Brigadier General Richard O'Meara (Ret. USA)—Brigadier General Richard O'Meara is a combat decorated veteran who fought in Vietnam before earning his law degree and joining the Army's Judge Advocate General Corps. He retired from the Army Reserves in 2002 and now teaches courses on Human Rights and History at Kean University and at Monmouth University.

Ambassador Douglas ''Pete'' Peterson—Ambassador Peterson served as the ambassador to the Socialist Republic of Vietnam until 2001. Prior to his diplomatic posting, Ambassador Peterson served three terms as a member of the United States House of Representatives, representing the Second Congressional District of Florida. He served 26 years in the United States Air Force having served in worldwide assignments as a fighter pilot and commander. He is a distinguished combat veteran of the Vietnam War and was incarcerated as a POW during that conflict for more than six years. He completed his military service in 1981 and has extensive experience in the private sector.

Commander Frederick C. Baldock (Ret. USN)—Commander Baldock was a Navy pilot and is a combat veteran of the Vietnam War. His plane was shot down over North Vietnam in 1966, and he spent seven years in captivity as a POW.

Commander Phillip N. Butler (Ret. USN)—Commander Butler was a Navy pilot and is a combat veteran of the Vietnam War. His plane was shot down over North Vietnam in 1965, and he spent nearly eight years in captivity as a POW.

Mr. MCCAIN. I read from the letter:

We strongly support your proposed amendments to the Defense Department Authorization bill concerning detainee policy, including requiring all interrogations of detainees in DOD custody to conform to the U.S. Army's Field Manual on Intelligence Interrogation (FM 34–52), and prohibiting the use of torture and cruel, inhuman and degrading treatment by any U.S. government agency.

It is now apparent that the abuse of prisoners in Abu Ghraib, Guantanamo and elsewhere took place in part because our men and women in uniform were given ambiguous instructions, which in some cases authorized treatment that went beyond what was allowed by the Army Field Manual. Administration officials confused matters further by declaring that U.S. personnel are not bound by longstanding prohibitions of cruel treatment when interrogating non-U.S. citizens on foreign soil. As a result, we suddenly had one set of rules for interrogating prisoners of war, and another for ''enemy combatants;'' one set for Guantanamo, and another for Iraq; one set for our military, and another for the CIA. Our service members were denied clear guidance, and left to take the blame when things went wrong. They deserve better than that.

The United States should have one standard for interrogating enemy prisoners that is effective, lawful, and humane. Fortunately, America already has the gold standard in the Army Field Manual. Had the Manual been followed across the board, we would have been spared the pain of the prisoner abuse scandal. It should be followed consistently from now on. And when agencies other than

DOD detain and interrogate prisoners, there should be no legal loopholes permitting cruel or degrading treatment.

This is signed by GEN Joseph Hoar, LTG Robert Gard, LTG Claudia Kennedy, MG Melvyn Montano, RADM Don Guter, RADM John Hutson, BG David Brahms, BG James Cullen, BG Evelyn Foote, BG David Irvine, BG Richard O'Meara, et cetera, and all of these people, including General Hoar, served as Commander in Chief United States Central Command. These are very credible people. If we had chosen, we could have gotten many more signatories to this amendment.

We are Americans. We hold ourselves to humane standards of treatment no matter how terribly evil or awful they may be. To do otherwise undermines our security, and it also undermines our greatness as a nation. We are not simply any other country. We stand for a lot more than that in the world: a moral mission, one of freedom and democracy and human rights at home and abroad.

We are better than the terrorists, and we will win because we are better than they are. The enemy we fight has no respect for human life or human rights. They don't deserve our sympathy. But this is not about who they are—it is not about who they are. It is about who we are. These are values that distinguish us from our enemies.

President Bush understands that the war on terror is ultimately a battle of ideas, a battle we will win by spreading and standing firmly for the values of decency, democracy, and the rule of law. I stand with him in this commitment. By applying to ourselves the basic standards we rightly preach to others, I believe we will only increase our effectiveness as the world's ultimate champion of liberty.

I thank Senator WARNER and Senator GRAHAM and others who have shown an interest. Senator WARNER has had a series of hearings for a long period of time. I believe we can do a great service for the military and for the country if we adopt this simple two-paragraph amendment that basically says that prisoners will be treated according to the Army Field Manual, which, by the way, is the tradition of treatment of prisoners for many wars.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I commend Senator MCCAIN. I have been privileged to know him ever since I was Secretary of Navy in the closing years of the war in Vietnam. I know no military family that has served our Nation with greater distinction than the McCain family. This is a subject about which my dear friend has knowledge that none of us possess. I have absolute confidence they are doing the right thing.

The two of us do have some technical differences of opinion. His amendment is predicated on the Army Field Manual which he mentioned is being revised. The current Army Field Manual basically dealt with State-sponsored conflict. I have every reason to believe that the follow-on manual, in due course, presumably in both classified and unclassified form, will be completed.

AMENDMENT NO. 1566

There is another approach here. I ask unanimous consent, if it is agreeable, to set the McCain amendment aside temporarily and ask amendment 1566 be brought up.

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

Mr. WARNER. And in no way do I wish it to substitute for Senator MCCAIN's amendment. This is a complicated subject.

Essentially, my amendment simply says it will be the Secretary of Defense that will establish uniform standards and procedures for two separable subjects, detention and interrogation.

While I have not had a chance to go through in detail the Army's Field Manual, I am not sure there is the emphasis placed on the detention rule in such a manner as equivalent to the detention and regulation that will be and is on the interrogation. Those responsible for detention are often quite different than those responsible for interrogation. If there is any mistreatment in the course of the detention, depending on the timing between such treatment and the follow-on interrogation, it seems to me we have a problem.

Therefore, my amendment entrusts to the Secretary of Defense the task to put together basically all of the objectives as enunciated by my distinguished friend from Arizona.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia, [Mr. WARNER], proposes an amendment numbered 1566.

Mr. WARNER. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for uniform standards and procedures for the interrogation of persons under the detention of the Department of Defense)

At the end of subtitle G of title X, add the following:

SEC. 1073. UNIFORM STANDARDS AND PROCEDURES FOR TREATMENT OF PERSONS UNDER DETENTION BY THE DEPARTMENT OF DEFENSE.

(a) UNIFORM STANDARDS AND PROCEDURES REQUIRED.—The Secretary of Defense shall establish uniform standards and procedures for the detention and interrogation of persons in the custody or under the control of the Department of Defense.

(b) CONSISTENCY WITH LAW AND TREATY OBLIGATIONS.—The standards and procedures established under subsection (a) shall be consistent with United States law and international treaty obligations.

(c) APPLICABILITY.—

(1) IN GENERAL.—The standards and procedures established under subsection (a) shall apply to all detention and interrogation activities involving persons in the custody or under the control of the Department of Defense, and to such activities conducted within facilities controlled by the Department of Defense, regardless of whether such activities are conducted by Department of Defense personnel, Department of Defense contractor personnel, or personnel or contractor personnel of any other department, agency, or element of the United States Government.

(2) EXCEPTION.—The standards and procedures established under subsection (a) shall not apply with respect to any person in the custody or under the control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

(d) CONSTRUCTION.—Nothing in this section shall affect such rights, if any, under the Constitution of the United States of any person in the custody or under the control of the Department of Defense.

(e) NOTICE TO CONGRESS OF REVISION.—Not later than 60 days before issuing any revision to the standards and procedures established under subsection (a), the Secretary of Defense shall notify, in writing, the congressional defense committees of such revision.

(f) DEADLINE.—The standards and procedures required by subsection (a) shall be established not later than 60 days after the date of the enactment of this Act.

Mr. WARNER. There are considerable parallels between the two amendments, with the exception that the subject should be adjusted to the Secretary of Defense. He may well designate the Army Field Manual as his work product, but then I would need, under the amendment, the assurance that equal emphasis is put on the detention phase as well as the interrogation phase.

Recent history has shown we must have uniform standards for detention and interrogation across the Department of Defense. We cannot have different standards for different theaters.

Soldiers, as Senator MCCAIN pointed out, have to be trained and well understand the rules and regulations as they relate to both detention and interrogation. That is the goal of the McCain amendment. I wholeheartedly support it. It is best to entrust the entire subject to the Secretary of Defense and hold him accountable, as opposed to the designation of the specific document which is in the process of being changed.

AMENDMENT NO. 1557, AS MODIFIED

Mr. President, I ask unanimous consent that the Senate return to consideration of the McCain amendment.

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

Mr. WARNER. Mr. President, seeing our other colleague, Senator GRAHAM, I yield the floor. But I also see Senator MCCAIN.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 1566

Mr. MCCAIN. Mr. President, I have a brief comment on the chairman's amendment. Leaving it in the hands of the Secretary of Defense is what caused the huge amount of problems we have today.

I have here—in fact, thanks to the tenacity of the Senator from South Carolina—finally, after a year and a half, 2 years, the memoranda that were submitted by the uniformed JAGS when

the rules for the treatment of prisoners were set up the first time, I say to my friend from Virginia. They all objected to it. They were overruled by the Secretary of Defense and the general counsel.

So now, if I understand it, the amendment of my dear friend from Virginia is going to return that to the Secretary of Defense. I urge him to read these memoranda which we finally got thanks to, again, the Senator from South Carolina: treating OEF detainees inconsistently with the Conventions; arguably lowers the bar for the treatment of U.S. POWs in future conflicts, even when nations agree with the President's status determination. Many would view the more extreme interrogation techniques as violative of international law, other treaties, or customary international law; perhaps violative of their own domestic law. This puts the interrogators and the chain of command at risk of criminal accusations abroad, either in foreign domestic courts or international fora, to include the ICC.

I remind my colleagues, these are the memoranda that were sent to comment on the Secretary of Defense guidelines for interrogations of prisoners, which were overruled. And then, a couple months later, they were rescinded.

So in all due respect, my friend from Virginia has a degree of confidence in the Secretary of Defense which, frankly, is not validated by what took place and many argue is one of the reasons why we had Abu Ghraib.

So I thank my colleague and yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, if I could reply to my good friend, you are absolutely right. And I know that chapter as you do and have studied it. But under the law, the Secretary of Defense is still the head of the Department, and as such I suppose he can alter the field manual of the Army and make it less in the present form and in the revised form in due course. But I think it is important we have a clear chain of authority and accountability. I look up the chain, and there are the laws established by the Secretary of Defense as opposed to those who might be involved in drawing up the Army Field Manual. I presume the Secretary of the Army is at the top of that pyramid.

But that is the reason I put in this amendment. I say to my good friend from Arizona, I hope we can sort this out before final passage and possibly amend it. I will withdraw mine because I want you to take the lead in every respect on this important amendment.

If I might add, I say to my friend from Arizona, there is another important amendment you needed to get completed.

Mr. MCCAIN. Mr. President, I thought my colleague wanted me to wait on the additional amendment.

Mr. WARNER. Well, whatever.

Mr. MCCAIN. But I will be glad to proceed. Why don't we let the Senator from South Carolina talk, and then maybe, if it is all right, I will offer the other amendment.

Mr. WARNER. Fine.

Mr. LEVIN. Mr. President, will the Senator yield for a question?

Mr. MCCAIN. I am glad to yield.

Mr. LEVIN. Mr. President, I have a unanimous consent request. I ask unanimous consent that I be added as a cosponsor to amendment No. 1557, which is the field manual amendment to which they have been referring.

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

Mr. LEVIN. Mr. President, if I could be recognized just for 1 minute to comment on this amendment, and then I will yield the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Michigan.

Mr. LEVIN. Mr. President, first of all, I congratulate Senator MCCAIN. I do not think there is anybody in this body who speaks with greater authority on the subject matter he has spoken to in this amendment. I commend him for the distinction he is making. It is a critical distinction. In addition to the fact that the field manual is there for everybody to see and has historic meaning, the difference between the McCain amendment and the one which was offered by the Senator from Virginia—another difference—is that the field manual is a public document. You can read what is in the field manual. The Secretary of Defense memoranda too often have been classified ''unavailable.'' We have been spending sometimes months and years trying to just find out what is in those memoranda.

So there is a very important difference between these two amendments in a number of regards. I very much believe that the first amendment, amendment No. 1557, is the way which is most consistent with our values. It makes it very clear, in public, what the authorities are and what the standards and criteria are. The contrast between that and something amorphous, which gives the Secretary of Defense a power he already has anyway, which is to issue regulations but to do so in secret and in a classified way, leads to more vagueness, more uncertainty, more conflict, more inability of Congress to perform oversight.

So I commend the Senator from Arizona for this amendment. I believe the differences between these two amendments are significant.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I accept my good friend's critique, but I do point out, as the Army Field Manual is under revision, there will be both a classified and unclassified portion of that manual.

Mr. LEVIN. Mr. President, if I could just comment briefly on that, at least with the unclassified portion, we have access to it, unlike the documents that are issued by the Secretary of Defense memoranda. They are classified, but they are also, too often, unavailable to Congress. They just use one excuse after another not to make those memoranda available to Congress. So there may be a classified version of the field manual, but at least Congress has access to that unclassified version.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I am well aware of the efforts of my good friend from Michigan to get documents from the Department of Defense and his modest success and some lack of success.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield to the distinguished Senator from South Carolina such time as he deems necessary.

Could the Chair advise us as to the amount of time remaining under the hour that I requested?

The PRESIDING OFFICER. The Senator from South Carolina has 20 minutes.

Mr. WARNER. That is the full time?

The PRESIDING OFFICER. The Senator from Virginia has 13 minutes. The Senator from Arizona has 3 minutes remaining.

Mr. WARNER. Well, we will allocate the time among the three of us in an equitable way.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 1557, AS MODIFIED

Mr. GRAHAM. Mr. President, I rise in support of Senator MCCAIN's amendment. The point that Senator WARNER is making, I fully understand. But I think we are at a crossroads in the war on terror. Guantanamo Bay has great potential to make us safer as a nation. But one of the problems we have experienced in this war is a problem of image. It is a new kind of enemy with a lot of nuances. But one thing we cannot do as a nation is forget who we are, what got us here for 200-something years. We can fight this enemy aggressively, no-holds-barred, go after them, and not lose who we are.

Senator MCCAIN is addressing one of the problems we have found crop up in different areas of the world when it comes to noncitizen foreign terrorists, and that is how you interrogate and stay within the boundaries of who you are as a people and not getting your own people in trouble by cutting corners.

So the reason I am supporting his amendment—and we are not just saying: Secretary of Defense, come up with a solution here—is because, after a lot of thought and study, it is clear to me that the Army Field Manual gives you everything you need to aggressively interrogate and seek good intelligence from foreign noncitizen terrorists held at GTMO and any other place under DOD control.

Mr. President, I would like to submit for the Record several memos that have just been recently declassified. They were requested on October 7 of last year by myself, Senator LEVIN, and Senator MCCAIN. The first one is a 27 February 2003 memo from BG Kevin M. Sandkuhler, U.S. Marine Corps, Staff Judge Advocate to CMC. The next one is from MG Thomas J. Romig, U.S. Army, the Judge Advocate General, dated 3 March 2003. The next is from MG Jack L. Rives, Deputy Judge Advocate General of the U.S. Air Force, dated 6 February 2003. The next is from RADM Michael F. Lohr, Judge Advocate General, U.S. Navy, dated 6 February 2003. The next is Rear Admiral Lohr, dated 13 March 2002. And the final memo is from Major General Rives, Deputy Judge Advocate General, U.S. Air Force, dated 5 February 2003. I ask unanimous consent those memorandums be printed in the RECORD.

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

DEPARTMENT OF THE NAVY,
HEADQUARTERS U.S. MARINE CORPS,
Washington, DC, February 27, 2003.

Memorandum for General Counsel of the Air Force

Subject: Working Group Recommendations on Detainee Interrogations

1. In addition to comments we submitted 5 February, we concur with the recommendations submitted by the Navy (TJAG RADM Lohr), the Air Force (TJAG MGen Rives), and the Joint Staff Legal Counsel's Office. Their recommendations dealt with policy considerations, contention with the OLC opinion, and foreign interpretations of GC IV (Civilians) and customary international law, respectively.

2. The common thread among our recommendations is concern for servicemembers. OLC does not represent the services; thus, understandably, concern for servicemembers is not reflected in their opinion. Notably, their opinion is silent on the UCMJ and foreign views of international law.

3. We nonetheless recommend that the Working Group product accurately portray the services' concerns that the authorization of aggressive counter-resistance techniques by servicemembers will adversely impact the following:

a. Treatment of U.S. Servicemembers by Captors and compliance with International Law.

b. Criminal and Civil Liability of DOD Military and Civilian Personnel in Domestic, Foreign, and International Forums.

c. U.S. and International Public Support and Respect of U.S. Armed Forces.

d. Pride, Discipline, and Self-Respect within the U.S. Armed Forces.

e. Human Intelligence Exploitation and Surrender of Foreign Enemy Forces, and Cooperation and Support of Friendly Nations.

KEVIN M. SANDKUHLER,
Brigadier General, USMC, Staff Judge Advocate to CMC.

[SECRET/NOFORN] DECLASSIFIED

Comments on Draft Working Group Report on Detainee Interrogations

1. Change p. 54, fifth paragraph, to read as follows (new language italic):

([S/NF]U) Choice of interrogation techniques involves a risk benefit analysis in each case, bounded by the limits of DOD policy and law. When assessing whether to use exceptional interrogation techniques, consideration should be given to the possible adverse effects on U.S. Armed Forces culture and self-image *which suffered during the Vietnam conflict and at other times due to perceived law of war violations. DOD policy indoctrinated in the DOD Law of War Program in 1979 and subsequent service regulations, greatly restored the culture and self-image of U.S. Armed Forces by establishing high benchmarks of compliance with the principles and spirit of the law of war and humane treatment of all persons in U.S. Armed Forces custody*. In addition, consideration should be given to whether implementation of such techniques is likely to result in adverse impacts for DOD personnel who are *captured or detained* [become POWs,] including possible perceptions by other nations that the United States is lowering standards related to the treatment of prisoners *and other detainees*, generally.

2. Add to p. 68, a paragraph after the seventh paragraph that reads:

(U) Comprehensive protection is lacking for DOD personnel who may be tried by other nations and/or international bodies for violations of international law, such as violations of the Geneva or Hague Conventions, the Additional Protocols, the Torture Convention, the Rome Statute of the ICC, or the Customary International Law of Human Rights. This risk has the potential to impact future operations and overseas travel of such personnel, both on and off duty.

DEPARTMENT OF THE ARMY, OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, DC, March 3, 2003.

MEMORANDUM FOR GENERAL COUNSEL OF THE DEPARTMENT OF THE AIR FORCE

Subject: Draft Report and Recommendations of the Working Group to Access the Legal, Policy and Operational Issues Related to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism (U)

1. (U) The purpose of this memorandum is to advise the Department of Defense (DOD) General Counsel of a number of serious concerns regarding the draft Report and Recommendations of the Working Group to Access the Legal, Policy and Operational Issues Related to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism (Final Report). These concerns center around the potential Department of Defense (DOD) sanctioning of detainee interrogation techniques that may appear to violate international law, domestic law, or both.

2. (U) The Office of Legal Counsel (OLC), Department of Justice (DOJ), provided DOD with its analysis of international and domestic law as it relates to the interrogation of detainees held by the United States Government. This analysis was incorporated into the subject draft Report and forms, almost exclusively, the legal framework for the Report's Conclusions, Recommendations, and PowerPoint spreadsheet analysis of the interrogation techniques in issue. I am concerned with several pivotal aspects of the OLC opinion.

3. (U) While the OLC analysis speaks to a number of defenses that could be raised on behalf of those who engage in interrogation techniques later perceived to be illegal, the ''bottom line'' defense proffered by OLC is an exceptionally broad concept of ''necessity.'' This defense is based upon the premise that any existing federal statutory provision or international obligation is unconstitutional per se, where it otherwise prohibits conduct viewed by the President, acting in his capacity as Commander-in-Chief, as essential to his capacity to wage war. I question whether this theory would ultimately prevail in either the U.S. courts or in any international forum. If such a defense is not available, soldiers ordered to use otherwise illegal techniques run a substantial risk of criminal prosecution or personal liability arising from a civil lawsuit.

4. (U) The OLC opinion states further that customary international law cannot bind the U.S. Executive Branch as it is not part of the federal law. As such, any presidential decision made in the context of the ongoing war on terrorism constitutes a ''controlling'' Executive act; one that immediately and automatically displaces any contrary provision of customary international law. This view runs contrary to the historic position taken by the United States Government concerning such laws and, in our opinion, could adversely impact DOD interests worldwide. On the one hand, such a policy will open us to international criticism that the ''U.S. is a law unto itself.'' On the other, implementation of questionable techniques will very likely establish a new baseline for acceptable practice in this area, putting our service personnel at far greater risk and vitiating many of the POW/detainee safeguards the U.S. has worked hard to establish over the past five decades.

5. (U) I recommend that the aggressive counter-resistance interrogation techniques under consideration be vetted with the Army intelligence community before a final decision on their use is made. Some of these techniques do not comport with Army doctrine as set forth in Field Manual (FM) 34–52 Intelligence Interrogation, and may be of questionable practical value in obtaining reliable information from those being interrogated.

THOMAS J. ROMIG,
Major General, U.S. Army,
The Judge Advocate General.

DEPARTMENT OF THE AIR FORCE, OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, DC, February 6, 2003.

MEMORANDUM FOR SAF/GC

From: AF/JA

Subject: Comments on Draft Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism (U)

1. (U) Please note that while I accept that the Department of Justice, Office of Legal Counsel (DoJ/OLC), speaks for the Executive Branch and that its legal opinions in this matter are to be followed, I continue to maintain that DoJ/OLC's opinions on several of the Working Group's issues are contentious. Others may disagree with various portions of the DoJ/OLC analysis. I believe we should recognize this fact and therefore urge that certain factors should be prominently provided to the DoD/GC before he makes a final recommendation to the Secretary of Defense. I recommend the following specific modifications to the draft report dated 4 February 2003:

a. Page 2, add the following sentence to the end of paragraph 2:

It should be noted that several of the legal opinions expressed herein are likely to be viewed as contentious outside the Executive Branch, both domestically and internationally.

b. Page 54, change fourth full paragraph to read as follows:

(U) Choice of interrogation techniques involves a risk benefit analysis in each case, bounded by the limits of DOD policy and law. When assessing whether to use exceptional interrogation techniques, consideration should be given to the possible adverse effects on U.S. Armed Forces culture and self-

image, *which suffered during the Vietnam conflict and at other times due to perceived law of armed conflict violations. DoD policy, indoctrined in the DoD Law of War Program in 1979 and subsequent service regulations, greatly restored the culture and self-image of U.S. Armed Forces by establishing high benchmarks of compliance with the principles and spirit of the law of war, and humane treatment of all persons in U.S. Armed Forces custody. U.S. Armed Forces are continuously trained to take the legal and moral ''high-road'' in the conduct of our military operations regardless of how others may operate. While the detainees' status as unlawful belligerents may not entitle them to protections of the Geneva Conventions, that is a legal distinction that may be lost on the members of the armed forces. Approving exceptional interrogation techniques may be seen as giving official approval and legal sanction to the application of interrogation techniques that U.S. Armed Forces have heretofore been trained are unlawful.* In addition, consideration should be given to whether implementation of such techniques is likely to result in adverse impacts for DoD personnel who become POWs, including possible perceptions by other nations that the United States is lowering standards related to the treatment of prisoners, generally.

Alternatively, change the last paragraph on page 68, to read as follows:

(U) The cultural and self-image of the U.S. Armed Forces suffered during the Vietnam conflict and at other times due to perceived law of armed conflict violations. DoD policy, indoctrinated in the DoD Law of War Program in 1979 and subsequent service regulations, greatly restored the culture and self-image of U.S. Armed Forces. U.S. Armed Forces are continuously trained to take the legal and moral ''high-road'' in the conduct of our military operations regardless of how others may operate. While the detainees' status as unlawful belligerents may not entitle them to protections of the Geneva Conventions, that is a legal distinction that may be lost on the members of the armed forces. Approving exceptional interrogation techniques may be seen as giving official approval and legal sanction to the application of interrogation techniques that U.S. Armed Forces have heretofore been trained are unlawful. General use of exceptional techniques (generally, having substantially greater risk than those currently, routinely used by U.S. Armed Forces interrogators), even though lawful, may create uncertainty among interrogators regarding the appropriate limits of interrogations, and may adversely affect the cultural self-image of the U.S. armed forces.

c. Page 68, add the following new paragraphs after the sixth full paragraph:

(U) Several of the exceptional techniques, on their face, amount to violations of domestic criminal law and the UCMJ (e.g., assault). Applying exceptional techniques places interrogators and the chain of command at risk of criminal accusations domestically. Although one or more of the aforementioned defenses to these accusations may apply, it is impossible to be certain that any of these defenses will be successful as the judiciary may interpret the applicable law differently from the interpretation provided herein.

(U) Other nations are likely to view the exceptional interrogation techniques as violative of international law and perhaps violative of their own domestic law. This places interrogators and the chain of command at risk of criminal accusations abroad, either in foreign domestic courts or in international fora, to include the ICC.

d. Page 68, add the following new paragraphs after the eighth full paragraph:

(U) Employment of exceptional interrogation techniques may have a negative effect on the treatment of U.S. POWs. Other nations may disagree with the President's status determination regarding Operation ENDURING FREEDOM (OEF) detainees, concluding that the detainees are POWs entitled to all of the protections of the Geneva Conventions. Treating OEF detainees inconsistently with the Conventions arguably ''lowers the bar'' for the treatment of U.S. POWs in future conflicts. Even where nations agree with the President's status determination, many may view the exceptional techniques as violative of other law.

2. (U) Should any information concerning the exceptional techniques become public, it is likely to be exaggerated/distorted in both the U.S. and international media. This could have a negative impact on international, and perhaps even domestic, support for the war on terrorism. It could likewise have a negative impact on public perception of the U.S. military in general.

JACK L. RIVES,
Major General, USAF,
Deputy Judge Advocate General.

DEPARTMENT OF THE NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, DC, February 6, 2003.

Subj: Working Group recommendations relating to interrogation of detainees.

1. Earlier today I provided to you a number of suggested changes, additions, and deletions to the subject document.

2. I would like to further recommend that the document make very clear to decision-makers that its legal conclusions are limited to arguably unique circumstances of this group of detainees, i.e., unlawful combatants held ''outside'' the United States. Because of these unique circumstances, the U.S. Torture Statute, the Constitution, the Geneva Conventions and customary international law do not apply, thereby affording policy latitude that likely does not exist in almost any other circumstance. (The UCMJ, however, does apply to U.S. personnel conducting the interrogations.)

3. Given this unique set of circumstances, I believe policy considerations continue to loom very large. Should service personnel be conducting the interrogations? How will this affect their treatment when incarcerated abroad and our ability to call others to account for their treatment? More broadly, while we may have found a unique situation in GTMO where the protections of the Geneva Conventions, U.S. statutes, and even the Constitution do not apply, will the American people find we have missed the forest for the trees by condoning practices that, while technically legal, are inconsistent with our most fundamental values? How would such perceptions affect our ability to prosecute the Global War on Terrorism?

4. I accept the premise that this group of detainees is different, and that lawyers should identify legal distinctions where they exist. It must be conceded, however, that we are preparing to treat these detainees very differently than we treat any other group, and differently than we permit our own people to be treated either at home or abroad. At a minimum, I recommend that decision-makers be made fully aware of the very narrow set of circumstances—factually and legally—upon which the policy rests. Moreover, I recommend that we consider asking decision-makers directly: is this the ''right thing'' for U.S. military personnel?

MICHAEL F. LOHR,
Rear Admiral, JAGC, U.S. Navy,
Judge Advocaate General.

DEPARTMENT OF THE NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, DC, March 13, 2002.

MEMORANDUM FOR THE AIR FORCE GENERAL COUNSEL

Subject: Comments on the 6 March 2003 Detainee Interrogation Working Group Report

1. My comments on subject report are provided below. These comments incorporate and augment those submitted by my action officer earlier this week. New comments are highlighted within the previously submitted text.

1. (U) Page 2, second paragraph: Add new penultimate sentence to read, ''In addition this paper incorporates significant portions of work product provided by the Office of Legal Counsel, United States Department of Justice.'' In the last sentence change ''by a Department . . .'' to ''by the Department . . .'' Finally, add new footnote to reference the OLC opinion to read ''Memorandum dated March xx, 2003., Re: xxxxxxxxxx.

Rationale: this WG paper contains large segments of DOJ work product, rather than being ''informed'' by DOJ. We believe the OLC opinion should be incorporated by reference into the WG report.

2. (U) Page 24, second paragraph, last sentence: delete.

Rationale: this sentence is not true. There are domestic limits on the President's power to interrogate prisoners. One of them is Congress's advice and consent to the US ratification to the Geneva Conventions that limit the interrogation of POWs. The willingness of the Executive, and of the Legislative Branch, to enforce those restrictions is a different matter.

3. (U) Page 24, footnote 20: delete or rewrite to read, ''This is the stated view of the Department of Justice.''

Rationale: Mr. Yoo clearly stated that he believes the viability of these defenses is greatly enhanced by advance Presidential direction in the matter. He specifically recommended obtaining such direction in writing.

4. (U) Page 26, first full paragraph, first sentence: delete.

Rationale: this statement is too broad. The similar language used at the end of the following paragraph is more accurate.

5. (U) Page 29, second paragraph, fifth sentence: Rewrite sentence to read, ''A leading scholarly commentator . . .'' and later in the sentence change ''. . . section 2340 would be justified under . . .'' to ''. . . section 2340 should be justified under . . .''

Rationale: There is only one article written by one person cited. Also the quoted language from the commentator indicates his view that torture should be permissible, not a statement that international law allows such.

6. (U) Page 29, second paragraph, last sentence: delete.

Rationale: this conclusion is far too broad but the general principle can be inferred from the discussion.

7. (U) Page 31, para d, third sentence and penultimate sentences: delete.

Rationale: This analogy is inapt. There is nothing in law enforcement that would authorize the use of torture or excessive force against persons for intelligence gathering.

8. (U) Page 41, second paragraph, penultimate sentence: delete.

Rationale: it is not clear what the meaning of the sentence is.

9. (U) Page 59, second paragraph: it is unclear if SECDEF must approve exceptional techniques on a case-by-case basis, or just approve their use generally.

10. (U) Page 63, footnote 86. The text of this footnote does not correspond to its citation

in the paper. It appears that the current text of footnote 86 belongs as part of the discussion of API in the paragraph above, or as part of the text of footnotes 83 or 84. Footnote 86 should detail the rationale for the Justice Department determination that GCIV does not apply.

11. (U) Page 67, technique 26: Add last sentence to read, ''Members of the armed forces will not threaten the detainee with the possible results of the transfer, but will instead limit the threat to the fact of transfer to allow the detainee to form their own conclusions about such a move.''

Rationale: threatening the detainee with death or injury (by the transfer) may be considered torture under international law.

12. (U) Page 72, second paragraph: in the last sentence replace ''protections of the Geneva Conventions'' with ''protections of the third Geneva Convention.''

Rationale: clarity

13. (U) Page 72, second paragraph: add new last sentence to read: ''Under international law, the protections of the fourth Geneva Convention may apply to the detainees.''

Rationale: this view is shared by Chairman's Legal and all the services.

14. (U) Page 72, third paragraph: at the beginning add, ''In those cases where the President has made a controlling executive decision or action . . .''

Rationale: this is the standard by which the President may ''override'' CIL.

15. (U) Page 73, sixth paragraph: Add new last sentence to read, ''Presidential written directive to engage in these techniques will enhance the successful assertion of the potential defenses discussed in this paper.''

Rationaie: much of the analysis in this paper is premised on the authority of the President as delegated/directed, in writing, to SECDEF and beyond. This point needs to be made prominently.

16. (U) Matrix Annex, Technique 33: delete.

Rationale: It is not clear what the intent of this technique is. If it loses its effectiveness after the first or second use, it appears to be little more than a gratuitous assault. Other methods are equally useful in getting/maintaining the attention of the detainee. It also has the potential to be applied differently by different individuals.

17. (U) Page 75, first paragraph, in the discussion re technique 36: Rewrite 3rd to last and penultimate sentences to read, ''The working group believes use of technique 36 would constitute torture under international and U.S. law and, accordingly, should not be utilized. In the event SECDEF decides to authorize this technique, the working group believes armed forces personnel should not participate as interrogators as they are subject to UCMJ jurisdiction at all times.''

This is a correct statement of the positions of the services party to the working group, who all believe this technique constitutes torture under both domestic and international law.

18. Thank you for the opportunity to comment. My action officer in this matter is CDR Steve Gallotta.

MICHAEL F. LOHR,
Rear Admiral, JAGC, U.S. Navy,
Judge Advocate General.

DEPARTMENT OF THE AIR FORCE, OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, DC, February 5, 2003.

MEMORANDUM FOR SAF/GC

From: AF/JA

Subject: Final Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism (U)

1. (U) In drafting the subject report and recommendations, the legal opinions of the Department of Justice, Office of Legal Counsel (DoJ/OLC), were relied on almost exclusively. Although the opinions of DoJ/OLC are to be given a great deal of weight within the Executive Branch, their positions on several of the Working Group's issues are contentious. As our discussion demonstrate, others within and outside the Executive Branch are likely to disagree. The report and recommendations caveat that it only applies to ''strategic interrogations'' of ''unlawful combatants'' at locations outside the United States. Although worded to permit maximum flexibility and legal interpretation, I believe other factors need to be provided to the DoD/GC before he makes a final recommendation to the Secretary of Defense.

2. (U) Several of the more extreme interrogation techniques, on their face, amount to violations of domestic criminal law and the UCMJ (e.g., assault). Applying the more extreme techniques during the interrogation of detainees places the interrogators and the chain of command at risk of criminal accusations domestically. Although a wide range of defenses to these accusations theoretically apply, it is impossible to be certain that any defense will be successful at trial; our domestic courts may well disagree with DoJ/OLC's interpretation of the law. Further, while the current administration is not likely to pursue prosecution, it is impossible to predict how future administrations will view the use of such techniques.

3. (U) Additionally, other nations are unlikely to agree with DoJ/OLC's interpretation of the law in some instances. Other nations may disagree with the President's status determination regarding the Operation ENDURING FREEDOM (OEF) detainees; they may conclude that the detainees are POWs entitled to all of the protections of the Geneva Conventions. Treating OEF detainees inconsistently with the Conventions arguably ''lowers the bar'' for the treatment of U.S. POWs in future conflicts. Even where nations agree with the President's status determination, many would view the more extreme interrogation techniques as violative of other international law (other treaties or customary international law) and perhaps violative of their own domestic law. This puts the interrogators and the chain of command at risk of criminal accusations abroad, either in foreign domestic courts or in international fora, to include the ICC.

4. (U) Should any information regarding the use of the more extreme interrogation techniques become public, it is likely to be exaggerated/distorted in both the U.S. and international media. This could have a negative impact on international, and perhaps even domestic, support for the war on terrorism. Moreover, it could have a negative impact on public perception of the U.S. military in general.

5. (U) Finally, the use of the more extreme interrogation techniques simply is not how the U.S. armed forces have operated in recent history. We have taken the legal and moral ''high-road'' in the conduct of our military operations regardless of how others may operate. Our forces are trained in this legal and moral mindset beginning the day they enter active duty. It should be noted that law of armed conflict and code of conduct training have been mandated by Congress and emphasized since the Viet Nam conflict when our POWs were subjected to torture by their captors. We need to consider the overall impact of approving extreme interrogation techniques as giving official approval and legal sanction to the application of interrogation techniques that U.S. forces have consistently been trained are unlawful.

JACK L. RIVES,
Major General, USAF,
Deputy Judge Advocate General.

Mr. GRAHAM. Now, over time, we are going to learn more about what these memos tell us, but basically these memos are telling us that the proposed interrogation techniques dealing with the war on terror, suggested by the Department of Justice, sent over to Department of Defense, were such a deviation from the normal way of doing business that it would get our own people in trouble. It was such a deviation from the normal way of doing business that we would lose the moral high ground in fighting the war on terror.

General Rives sums up:

Finally, the use of the more extreme interrogation techniques simply is not how the U.S. armed forces have operated in recent history. We have taken the legal and moral ''high-road'' in the conduct of our military operations regardless of how others may operate. Our forces are trained in this legal and moral mindset beginning the day they enter active duty. It should be noted that [the] law of armed conflict and code of conduct training have been mandated by Congress and emphasized since the Viet Nam conflict when our POWs were subjected to torture by their captors. We need to consider the overall impact of approving extreme interrogation techniques as giving official approval and legal sanction to the application of interrogation techniques that U.S. forces have consistently been trained are unlawful.

He talks about a slippery slope that we are about to embark on that will result in some of our own people being subject to being court-martialed because the Uniform Code of Military Justice has many provisions dictating how you will treat someone who is in your custody as a detainee. And they were trying to tell the Department of Justice and the Department of Defense civilian lawyers: Do not go down this road. You are going to bite off more problems than it is worth.

Admiral Lohr says that some of the techniques would violate the torture statute. I will read in more detail later what these memos are telling us the rules of the road are. But these are not from the ACLU. These are not from people who are soft on terrorism, who want to coddle foreign terrorists. These are all professional military lawyers who have dedicated their lives, with 20-plus year careers, to serving the men and women in uniform and protecting their Nation. They were giving a warning shot across the bow of the policymakers that there are certain corners you cannot afford to cut because you will wind up meeting yourself.

What Senator MCCAIN is trying to do is build upon their advice by putting in

place an interrogation technique that this country can be proud of, that we all will understand, and that can be implemented to make us safer without having a black eye throughout the world.

I asked the question—when I went to GTMO with the chairman about a week or 2 ago—to all the interrogators there: Is there anything lacking in the Army Field Manual that would inhibit your ability to get good intelligence? And they said no. I asked: Could you live with the Army Field Manual as your guide and do your job? They said yes.

The reason the Army Field Manual is a good source is because it has been part of who we are for years. People are trained on it. What was happening is, the Department of Justice, understandably, after September 11, wanted to come up with the most aggressive techniques possible to deal with foreign terrorists. But the JAGS are telling us you cannot look at this one event in isolation. You have to understand what we have been standing for for 60 years and what the law actually says. The DOJ's interpretation of the torture statute from a lawyer's point of view was absurd. And the JAGS were telling the policymakers: If you go down this road, you are going to get your own people in trouble. You are on a slippery slope. You are going to lose the moral high ground. This was 2003. And they were absolutely right.

To Secretary Rumsfeld's credit, when he heard about the working group having problems with the DOJ's suggested interpretations of ''interrogation,'' he reconvened and the techniques changed. But as Senator MCCAIN has said very well, we need to bring certainty to this process of interrogating foreign terrorists to make sure we can get good, reliable information. We can do it in a way that people understand, our troops will not get in trouble, and we can show the world we are truly a rule-of-law nation.

There is nothing inconsistent with interrogating people to get good information to protect our country and using the Army Field Manual. What has got us in trouble is when we try to make it up as we go, when we forget who we are, when we will not listen to people who have worn the uniform, who are in uniform, telling us: Do not go down this road, our people are trained to do it one way, you are confusing the heck out of them.

What have we learned in the last 2 years? If you know what the rules are about interrogating anybody, come tell me because I can't figure it out. I have spent 20 years as an Air Force lawyer myself. There is much confusion, and confusion in war is dangerous. Anyone who misunderstands what we are doing here in terms of our view of terrorists is playing politics. No one supporting this amendment wants a foreign noncitizen terrorist not to be aggressively detained, prosecuted, if appropriate, and interrogated to make our country safer. We can prosecute, we can detain, and we can interrogate aggressively, but we have to have rules that our people can understand and don't deviate from who we are as a Nation. That is why I am supporting this amendment.

Everyone who works at GTMO dealing with the 500 foreign noncitizen terrorists suspects, enemy combatants, has told me, because I asked the question, if you use the Army Field Manual, we have everything within that manual we need to do the job right. If you use the Army Field Manual, we will be back in a good place with the law. We will be back in a place where our people can understand what is going on. We will again capture the moral high ground which is the ultimate way to win this war.

There is no downside to this. The upside is huge. We are able to get good information, not get our people in trouble, and have a better image in the world. That is why I am supporting this amendment.

I have included these memos for the record. It would serve every Senator well to spend 5 or 10 minutes reading through them because these people were telling us in 2003, if you go down this road, the road we chose initially, you are going to get everybody involved in trouble. That is exactly what happened.

I yield the floor.

AMENDMENT NO. 1556, AS MODIFIED

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I have amendment No. 1556 at the desk. I ask unanimous consent for its modification.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. MCCAIN. Mr. President, is it the desire that I call up 1556 at this time?

Mr. WARNER. Yes, Mr. President, I suggest that we have amended the present one which is referred to as the Army Field Manual, and I am a cosponsor on that. Now there is a second amendment. I submitted to the Senator a suggestion, I believe that is——

Mr. MCCAIN. It is modified.

Mr. WARNER. Let's bring that up now and have that pending.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the amendment No. 1556 be considered at this time.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. Reserving the right to object, I know the discussion has been going on about the field manual issue. Is the Senator now going to that amendment or are we leaving that amendment? I would like to at least make a few remarks about that subject.

Mr. WARNER. Mr. President, the field manual amendment has been laid aside for the moment. This goes to a second amendment which is——

Mr. SESSIONS. Was there a unanimous consent request made for that?

The PRESIDING OFFICER. The Chair heard a unanimous consent request to move to a new amendment.

Mr. WARNER. That is correct.

The PRESIDING OFFICER. And the Chair asked if there was objection. Did the Senator from Alabama object?

Mr. SESSIONS. I object at this point because I don't understand what we are doing. I want to be able to speak on the amendment dealing with the field manual.

Mr. WARNER. I believe the Senator has just come on the floor. We have been on this now for about 45 minutes covering the parameter of the issues that would be brought up. I respect his desire to speak. We will try to accommodate you at any point. I would urge that we allow the Senator from Arizona to perfect this amendment and then in due course he will speak to it. I will speak to it, and we will lay it aside. And we will find the time for the distinguished Senator from Alabama to speak.

Mr. SESSIONS. Well, everybody has spoken for it. Nobody has spoken against it.

Mr. MCCAIN. Could I ask, maybe we could take a maximum of 5 minutes, 3 or 4 minutes on this amendment, for which I had unanimous consent, and then go back to allow the Senator from Alabama to speak.

Mr. WARNER. That is correct.

Mr. SESSIONS. That would be fine. If I could have 10 minutes, if I could share a few thoughts on the previous amendment in the next 10 minutes, I would be happy.

Mr. WARNER. We definitely will make that happen. But I want to inquire of the Senator from South Carolina, you also have a third amendment. I am not sure of the status. You have it at the desk. You have spoken to it.

Mr. GRAHAM. I would like at this time to submit it to the desk if I may.

Mr. MCCAIN. I ask unanimous consent that I be allowed to propose this amendment, the Senator from Alabama be allowed to speak for 10 minutes, the amendment be set aside, and the Senator from South Carolina be allowed to propose his amendment.

Mr. WARNER. Mr. President, I think that is a very orderly manner in which to accommodate. Then the Senator from Alabama—let's get the time remaining and I will yield some of my time to the Senator from Alabama.

The PRESIDING OFFICER. The motion on the floor right now is to call up, as I understand it, amendment No. 1556 by the Senator from Arizona as modified.

Mr. MCCAIN. As modified.

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

Ms. STABENOW. Reserving the right to object, I don't intend to object, I understand we are working out some amendments. I also have an amendment I would like to offer. I wanted to raise, as the agreement is being put together, that I have the opportunity to do that.

Mr. WARNER. Mr. President, I will assure you, working with the distinguished Senator from Michigan, we

will arrange—he has time immediately following the 1 hour being divided between three Senators and now a fourth. I want to make sure we have the time remaining to satisfy the needs of the Senator from Alabama. We now are proceeding on the second McCain amendment.

The PRESIDING OFFICER. Is there objection to reporting amendment No. 1556 by the Senator from Arizona?

Mr. MCCAIN. As modified.

The PRESIDING OFFICER. As modified. Without objection, it is so ordered. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 1556, as modified.

The amendment is as follows:

At the end of subtitle G of title X, add the following:

SEC. 1073. PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT OF PERSONS UNDER CUSTODY OR CONTROL OF THE UNITED STATES GOVERNMENT.

(a) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) PRESIDENTIAL WAIVER.—(1) The President may waive the prohibition in subsection (a), on a case-by-case basis, if the President—

(A) determines that the waiver is required for a military or national security necessity; and

(B) submits the appropriate committees of Congress timely notice of the exercise of the waiver.

(2) The authority of the President under paragraph (1) may not be delegated.

(c) CONSTRUCTION.—Nothing in this section shall not be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(d) LIMITATION ON SUPERSEDURE.—The provisions of this section shall not be superseded, except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate; and

(B) the Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term ''cruel, inhuman, or degrading treatment or punishment'' means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

Mr. WARNER. Mr. President, we would like to have the Senator from Arizona take such time as he desires to explain this. I wish to be added as a cosponsor to this amendment. Then we will yield the floor to the Senator from Alabama to speak for up to 10 minutes on the subjects of these three amendments. Then the balance of the time will be accorded to the Senator from South Carolina to bring forth his amendment.

The PRESIDING OFFICER. The Chair will notify the Senators that the Chair is still working under the original previous order of an hour equally divided, 20 minutes to the Senator from South Carolina, 20 minutes to the Senator from Virginia, and 20 minutes to the Senator from Arizona.

Mr. WARNER. That is correct. Would the Chair advise of the three Senators in the original order, what is the time remaining for each.

The PRESIDING OFFICER. The Senator from Arizona has 2 minutes remaining. The Senator from Virginia has 9 minutes remaining.

Mr. WARNER. I can't hear the Chair.

The PRESIDING OFFICER. The Senator from Virginia has 9 minutes remaining. The Senator from South Carolina has 2 minutes—10 minutes remaining.

Mr. WARNER. I yield from my 9 minutes such time as the Senator from Arizona may need.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, with all due respect to the chairman, I don't think that is going to quite work because the Senator from Alabama needs 10 minutes. And if you are using your 9 and I only have 2, that doesn't get it done. I ask unanimous consent that I have 3 minutes to discuss my amendment.

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

Mr. MCCAIN. That is an additional 3 minutes. I ask unanimous consent that following that, the Senator from Alabama be recognized for 10 minutes in addition to the unanimous consent agreement, and then the Senator from South Carolina be allowed to propose his amendment.

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

Mr. MCCAIN. Mr. President, I ask for the yeas and nays on this amendment and the previous amendment, No. 1557.

The PRESIDING OFFICER. Is there objection to the request to ask for the yeas and nays on two amendments at this time?

Without objection, it is in order to so request.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. MCCAIN. Mr. President, I ask unanimous consent that Senator WARNER, Senator LINDSEY GRAHAM, and Senator COLLINS be added as cosponsors. I believe we are still scheduled for a vote at 5:30.

Mr. President, this amendment would prohibit cruel, inhuman, and degrading treatment of persons in the detention of the U.S. Government. The amendment doesn't sound like anything new. That is because it isn't. The prohibition has been a longstanding principle in both law and policy in the United States. The Universal Declaration of Human Rights adopted in 1948 states simply that: No one shall be subject to torture or cruel, inhuman, or degrading treatment or punishment. The International Covenant on Civil and Political Rights, to which the U.S. is a signatory, is the same. The Binding Convention Against Torture, negotiated by the Reagan administration, ratified by the Senate, prohibits cruel, inhuman, and degrading treatment. On last year's DOD authorization bill, the Senate passed a bipartisan amendment reaffirming that no detainee in U.S. custody can be subject to torture or cruel treatment as the U.S. has long defined these terms. All of this seems to be common sense and in accordance with longstanding American values.

I will be glad to explain that amendment more if anyone wants. In the meantime, I know the Senator from Alabama is waiting.

I yield back the remainder of my time on this amendment. I ask unanimous consent we return at this time to amendment No. 1557, according to the previous unanimous consent agreement.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alabama is recognized for 10 minutes.

Mr. WARNER. If the Senator will withhold, I want to endorse the McCain amendment. Essentially what he is doing is codifying what is policy now. I think it is of such importance that it would require this bill to do so.

I yield the floor.

AMENDMENT NO. 1557

The PRESIDING OFFICER. The Senator from Alabama is recognized for 10 minutes.

Mr. SESSIONS. Mr. President, I will share a little bit of the history of what has happened, as I recall it. I am sorry, I just got back from Alabama and was not able to participate earlier in the debate. We have had maybe 29 hearings involving prisoner abuse. That is a lot of hearings. I serve on the Judiciary and Armed Services Committees. Probably 20 of those have been in those 2 committees of which I have been a member and tried to participate as much as I could in each one of them. I remember that the U.S. military announced they had problems in Abu Ghraib with prisoner abuse. They indicated they were conducting an investigation of it. Members of the Senate, like dogs that chase a car down the road, sometimes I thought they thought they were making the car go because they were chasing it.

The military commenced, on its own accord, an investigation that has culminated in the conviction of a number of people who have gone to jail for rather substantial periods of time for

violating the policies of the Department of Defense and the laws of war on those prisoners in Abu Ghraib. It took place on a midnight shift and was not justified. It was beyond the law, and they have been punished for it. That has been morphed into allegations about what happened at Guantanamo.

We apprehended 17,000 prisoners in Afghanistan and Iraq. We brought 700 to Guantanamo. There are only 500 left. Some of those are the worst of the worst. Allegations were made that they were being abused. A thorough investigation has been conducted of that. Once again, we had a committee hearing to rehear the report. General Schmidt said there were 24,000 investigations. He found three areas in which he felt things had gone awry at Guantanamo. All happened right quickly after 9/11, not going on now, because I was there at Guantanamo Friday a week ago and they absolutely assured us, Senator GRAHAM and others who were with us, Chairman WARNER, that nothing like that is going on today.

But what were the three complaints? Mr. Khatani, the 20th hijacker, he found, had been abused cumulatively, three different things happened. He was interrogated for 20 hours. He was made to listen to loud music. And at certain times he had been put in shackles. The general found that was not torture under the definition of torture. It was not inhuman. But together, they violated the standards the U.S. military adheres to, and he felt that was in error.

One individual was screaming loudly repeatedly and would not stop. Someone said he should be stopped. They found some duct tape, and Americans, I guess, are good with that. They put it around his mouth. He took it off, and they did it again. He took it off, and they did it again. So they put it all the way around his head. He felt that was an abuse. A woman interviewer-interrogator, perhaps losing her temper, or whatever, issued a threat to one of the prisoners and their family. There were 3 out of 24,000 matters in Guantanamo.

So, first, I reject the idea that this Defense Department and our Army and our military is out of control, is confused about what their powers and duties and responsibilities are. I reject that. I don't believe that is accurate.

Now, the field manual is good. We had a number of witnesses before the committee. In one of the many hearings, General Taguba and several others, when asked, or they just volunteered that the current rules of interrogation under the field manual aren't appropriately applicable to all the kinds of new threats we face today and the kind of prisoners we deal with today. These prisoners today are not under the Geneva Conventions and aren't prisoners of war. They are unlawful combatants. They sneak into countries. They don't wear a uniform. They don't carry their arms openly. They make bombs. They direct them not at military targets but at men, women, and children who are going about their peaceful business. So it is indisputable that the Geneva Conventions don't apply to them.

We have a statute in this country that prohibits torture of anybody in our control, and that statute stands firm and clear, and that is certainly a basis for a criminal prosecution for anybody who goes too far in interrogating witnesses.

Now, you are limited in what you can do when you interrogate a prisoner of war. We are told to give only name, rank, and serial number, and others have similar instructions from their countries. You are limited as to how much you can interrogate them and how much you can expect them to say. These people are not prisoners of war. They are terrorists, unlawful combatants, determined to savage the peaceful people of Spain and their railroad, the people of London, or the people of New York City. Thank God that because we have been aggressive and been after them and obtained intelligence from interviews and interrogation and techniques within the rules of warfare, we have been able to prevent another attack on this country—Lord be praised—for almost 4 years now. It can happen again at any time.

I am proud of what our men and women are doing. I was at one of the committee hearings when a young lieutenant commander in the Navy testified that the prosecutor blocked him from interviewing a witness. He told him what to do. He told him he could only plead guilty.

I said: Sir, you are a lieutenant commander in the U.S. Navy—I was in a JAG officer slot. Unlike Senator GRAHAM, I was not trained at the JAG officer school. But I had some training in it and taught the laws of warfare to our soldiers in the Army Reserve. At any rate, this guy said he was ordered by the prosecutor.

I said: I never heard of a defense counsel saying a prosecutor could order them around.

He said: Well, he told me I could not see the prisoner.

I said: You could not see the prisoner?

He said: Except at limited times.

It was out of this that he came up with this bizarre allegation that he was somehow defending the terrorist. He was given a letter, and he said he could only represent him to plead guilty. The letter that appointed him to defend the guy said he was to represent him in all categories. I was disappointed in the quality of his complaints. I don't think they held up to be nearly what he was saying publicly. Whatever got into people's craw about how these matters were handled is a bit out of whack.

Let's say this: The field manual is the manual that controls our handling of a lot of things in the Army, including interrogation. But the President of the United States is Commander in Chief of the military, and these kinds of prisoners, as the witnesses told us in committee, were not contemplated when the field manual was written. Different techniques could be legitimate against them that would not be legitimate against lawful combatants—the kinds of people we have seen so many times in the history of warfare. It is a weird thing. We should not treat them inhumanely. It is an order of the President that we cannot. We cannot torture them. We have a criminal statute that defines that and says you cannot do it. You can go to jail if you do.

I ask unanimous consent for 2 more minutes.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Mr. President, reserving the right to object, I wonder if we can line up some time at this point. I will not object, but after he is recognized, I believe then the majority has additional time for another amendment going up to what time?

Mr. WARNER. We are operating under an original 1-hour agreement that was modified to give 10 minutes to the Senator from Alabama. I think under the original 1 hour the Senator from Virginia has time and the Senator from South Carolina has time. Would I be correct?

The PRESIDING OFFICER. The Senator is correct. The Senator from Virginia has 9 minutes remaining. The Senator from South Carolina has 10 minutes remaining. We still show the Senator from Arizona, Mr. MCCAIN, with 2 minutes remaining.

The Chair also notifies Senators that under the previous order, at 5 o'clock, the Senate is to go to 30 minutes of debate on the Americans with Disabilities resolution.

Mr. WARNER. Mr. President, that is followed by a vote, is my understanding.

The PRESIDING OFFICER. Yes, it is scheduled for 5:30.

Mr. LEVIN. Mr. President, I ask unanimous consent that immediately following the completion of those three time periods on the Republican side, I be allocated 10 minutes on this side, which I will provide equally between the junior Senator from Michigan, the Senator from Washington, and myself, so that four amendments can be introduced and laid aside.

Mr. WARNER. Reserving the right to object, and I do not wish to object, it seems to me that reality dictates that in 6 minutes we will go on the ADA; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. In effect, the Senator from South Carolina, unless he wants to take the 6 minutes and put his amendment in, we would have to come back to it at the conclusion of the ADA. Would that be acceptable?

Mr. GRAHAM. I don't want to stop Senator SESSIONS from finishing. I can come back.

The PRESIDING OFFICER. The unanimous consent request right now is 2 additional minutes for the Senator from Alabama.

Mr. LEVIN. Reserving the right to object, we have not had any time prior to the ADA matter, and it was intended that we have some time. There is a prepared UC that would perhaps assist us, which has been handed to us. I wonder if the manager will read this.

Mr. WARNER. Mr. President, I ask unanimous consent that notwithstanding the previous order, the Senate resume consideration of S. 207 at 5:15 today, with 15 minutes to debate under the control of Senator HARKIN. I further ask that following the use or yielding back of the time, the Senate proceed to a rollcall vote on the resolution as under the previous order.

Mr. LEVIN. Reserving the right to object, I ask that that be modified to allow 10 minutes between 5:15 and 5:30 to be granted to this side for the introduction of those amendments. They will be introduced, with a minute on each, and then set aside.

Mr. WARNER. Mr. President, I believe that will accommodate our distinguished colleague from South Carolina to introduce his amendment beginning now, concluding at 5:10, at which time the Chair will recognize the junior Senator from Michigan for a period not to exceed 5 minutes.

Mr. LEVIN. No.

Mr. SESSIONS. Mr. President, can we include my 2 minutes?

Mr. LEVIN. The junior Senator from Michigan, 2 minutes; the Senator from Washington, 2 minutes; and me for 1 minute.

The PRESIDING OFFICER. Does the Senator modify the unanimous consent request?

Mr. WARNER. I do so to accommodate Senator LEVIN. We have 2 minutes now for the Senator from Alabama to complete his remarks before the Chair recognizes the Senator from South Carolina; is that correct?

The PRESIDING OFFICER. Is there objection to the request by the Senator from Alabama?

Mr. LEVIN. Reserving the right to object, does that include the UC which the Senator from Virginia read?

The PRESIDING OFFICER. The separate unanimous consent request of the Senator from Virginia would incorporate that. There is one request for 2 additional minutes for the Senator from Alabama; 9 minutes for the Senator from Virginia—

Mr. LEVIN. Reserving the right to object, the Democratic leader is going to want 2 minutes prior to the vote on leadership time, or prior to 5:15. You all figure it out.

Mr. WARNER. We certainly want to accommodate the Democratic leader. The Senator from South Carolina indicated that perhaps he would like to take up his amendment following the vote, giving him then such time as he requires, and giving the Senator from Michigan such time as he may require. So perhaps let us allocate the remaining time between now and 5:15 between the Senator from Alabama, the two colleagues on that side, and the distinguished Democratic leader.

Mr. GRAHAM. That is acceptable to me.

Mr. WARNER. Mr. President, following the completion of the rollcall vote, I ask unanimous consent that the Senator from South Carolina be recognized.

The PRESIDING OFFICER. If the Chair understands the now-modified unanimous consent request, it is a request that the Senator from Alabama be recognized for 2 additional minutes, the time between that and 5:15 would be the Senator from Michigan, and at 5:15, under the previous order, the Senate would consider the Americans with Disabilities resolution, followed by a vote at 5:30, followed by the Senator from South Carolina being recognized to offer his amendment.

Mr. WARNER. Mr. President, that is correct.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Reserving the right to object, I would like to be able to state some general areas of agreement and disagreement concerning Senator SESSIONS' statement. Is that possible when I introduce my amendment?

Mr. LEVIN. I wonder if the Senator will yield. We need only 7½ minutes before 5:15. I wonder if the chairman will agree to this: After Senator SESSIONS, go to the Senator from South Carolina for 5 minutes, and then come to me.

Mr. WARNER. That is acceptable.

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

The Senator from Alabama is recognized for 2 minutes.

Mr. SESSIONS. Mr. President, I will try to conclude and sum this up.

This country was attacked by a very dangerous group of people. I certainly respect my colleagues' concern and commitment that our prisoners be treated humanely and consistent with the rules of war. I have also said that the rules of the Geneva Conventions do not apply to these unlawful combatants. The field manual is an Army Department of Defense document that sets the rules for our conduct. But the DOD can alter that.

As I understand what this amendment would do, it would make the field manual, with regard to the section involving interrogation and intelligence, the equivalent of law; that before the Army or Department of Defense could make any changes in those field manuals, somebody would have to offer legislation in the House and the Senate, which would be subject to a filibuster and maybe we could fix it and maybe we could not. It becomes force of law. I think that is a mistake.

Finally, alterations in procedure by which these prisoners or detainees were handled was done with review by the Department of Justice. We had Attorney General Gonzales, when he was White House counsel and Attorney General, testify about how it came about and all the legal research that went into it. We had the Department of Defense leadership discuss this. They reviewed it. The generals reviewed the heightened techniques personally, individually, and carefully on a case-by-case basis, and they recommended this general at Guantanamo, Miller, be disciplined because these combination of events exceeded what was proper. It was overruled later, but that is how seriously they take this.

I don't think this is the way to fix this situation. Some prisoners need to be handled differently than others. We should not bind by law what the field manual states.

The PRESIDING OFFICER. The Senator's time has expired. Under the unanimous consent agreement, the Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, I would like to build on what Senator SESSIONS said. If this amendment did the things suggested, I would support it. One, the Army Field Manual is being revised, as we speak, with two groups in mind—lawful combatants and unlawful combatants. The amendment says that the Army Field Manual be the guide in whatever form it is in. It does not lock in this version. They are going to have a version part of it classified so our enemy does not have a chance to prepare for interrogation techniques that deal with lawful combatants and unlawful combatants.

The reason we are doing that is because what the JAGs told us over 2 years ago. The common thread among our recommendations is concern for servicemembers.

If we put people on the line in this war in terror, we want to give them everything they need as far as equipment. If we put people on the line in terms of handling detainees, we want to give them everything they need, the tools to get good information, but what we do not want to do is put our own people at risk.

We are trying to armor all our vehicles. What we are trying to do with the people who are holding these terrorists and interrogating them is not getting them in trouble. The Office of Legal Counsel, on 27 February 2003, from a Marine general, not exactly the ACLU, said:

> The common thread among our recommendations is concern for our service members. The Office of Legal Counsel does not represent the services, thus understandably concern for service members does not reflect in their opinion. Notably, their opinion is violent on the foreign views of international law.

This is what the judge advocate general of the Army said:

> I recommend the aggressive counterresistant interrogation techniques under consideration be vetted with the Army intelligence community before a final decision on their use is made. Some of these techniques do not comport with Army doctrine as set forth in the Field Manual, FM 34–52, intelligence interrogation, and may be of questionable practical value in obtaining reliable information of those being interrogated.

What we are trying to do is have a guide our troops can understand with

two parts—one for lawful combatants and one for unlawful enemy combatants. We will know what the rules of the road will be. We are putting congressional approval on those rules.

We have had the White House, Congress, and eventually the courts saying you can aggressively interrogate prisoners not covered by the Geneva Conventions. We have been all over the board for the last couple of years. We are trying to bring it together in symmetry where the military can write the rules. They know better than I do. I am not saying I am an expert on interrogations. They are going to write the rules the way they need to be written, and Congress is going to say you are good to go.

These JAGs were telling us you have confused concepts, so we are trying to do away with that confusion to make it stronger, not weaker, to make us better at gathering intelligence and avoid the problems we have had in the last 2 years.

I think it is a very smart thing to do. I look forward to trying to help change it if it needs to be changed, but nobody is locking the military into a set of rules that does not allow them to aggressively get what they need to make us safe. We are trying to provide the military and all those in charge of detainees clear guidance so they will have the flexibility they need and we will not get our people in trouble. That is what we have been working on for 2 years. We are at a point where we can actually accomplish something that will be good for this country, good for the military, and help win this war on terror. Part of this war is about image.

Mr. SESSIONS. Will the Senator yield?

Mr. GRAHAM. Yes, I yield.

Mr. SESSIONS. It did say ''not authorized in the field manual.'' But the Senator from South Carolina interprets that to mean that the military could amend it at any point in time.

Mr. GRAHAM. Absolutely.

Mr. SESSIONS. I think that is more acceptable, but even then the policies in the field manual should reflect the executive branch, it seems to me, being able to use extraordinary events and extraordinary circumstances.

Mr. GRAHAM. And it will be. There will be a section that is specific for unlawful enemy combatants. That is not a traditional way to deal with them versus POWs.

Mr. SESSIONS. I thank the Senator.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan has the time remaining up to 5:15 p.m. under his control.

Mr. LEVIN. Mr. President, I yield 3 minutes to my colleague from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 1435

(Purpose: To ensure that future funding for health care for veterans takes into account changes in population and inflation)

Ms. STABENOW. Mr. President, I thank my friend and distinguished colleague. I ask unanimous consent to set aside the pending amendment, and I call up amendment No. 1435.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Ms. STABENOW], for herself, Mr. JOHNSON, Mr. AKAKA, Mrs. MURRAY, Mr. DAYTON, Mr. NELSON of Florida, Mr. LAUTENBERG, Mr. SALAZAR, Mrs. LINCOLN, and Mr. CORZINE, proposes an amendment numbered 1345.

Ms. STABENOW. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The amendment is printed in the RECORD of July 23, 2005 under ''Text of Amendments.'')

Ms. STABENOW. Mr. President, today's soldiers are tomorrow's veterans, and America has made a promise to these brave men and women to provide them with the care they need and deserve. Senator JOHNSON and I and others are offering an amendment today to provide full funding for VA health care to ensure that the VA has the resources necessary to provide quality care in a timely manner to our Nation's sick and disabled veterans.

The Stabenow-Johnson amendment provides guaranteed funding for America's veterans from two sources. First, the legislation provides an annual discretionary amount that would be locked in for future years at the 2005 funding levels and, second, in the future, the VA would receive a sum of mandatory funding that would be adjusted year to year based on the changes in demand from the VA health care system and the rate of health care inflation.

This is about whether we are going to fully support our brave men and women who are fighting today and have fought in the past and will fight tomorrow, whether we are going to continue to debate year to year whether there is adequate funding for veterans health care or whether we will make a statement in this bill that part of national defense is making sure that when our men and women come home and put on the veteran's cap, they will, in fact, be assured that the health care they need will be there, not dependent on the Appropriations Committee entirely, not dependent on what happens year to year, but knowing there is a full commitment that we have made to them for veterans health care.

I will speak further at a later time. I understand there are other colleagues who wish to speak on other amendments. I simply ask colleagues to support this very important commitment, keeping our promises to our veterans, starting with the fact that we say very loudly and clearly that veterans health care, in the full amount needed, will be available to each and every one of our brave veterans.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield 3 minutes to the Senator from Washington.

AMENDMENT NO. 1348

Mrs. MURRAY. Mr. President, I ask unanimous consent to lay the pending amendment aside.

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

Mrs. MURRAY. Mr. President, I come to the floor this afternoon to call up two amendments, and in the event cloture is invoked on the underlying bill, I will ask for the yeas and nays on both amendments.

First, I ask unanimous consent to call up amendment No. 1348 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 1348.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the assistance to local educational agencies with significant enrollment changes in military dependent students due to force structure changes, troop relocations, creation of new units, and realignment under BRAC)

Strike section 582 of the bill and insert the following:

SEC. 582. ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES WITH SIGNIFICANT ENROLLMENT CHANGES IN MILITARY DEPENDENT STUDENTS DUE TO FORCE STRUCTURE CHANGES, TROOP RELOCATIONS, CREATION OF NEW UNITS, AND REALIGNMENT UNDER BRAC.

(a) AVAILABILITY OF ASSISTANCE.—To assist communities making adjustments resulting from changes in the size or location of the Armed Forces, the Secretary of Defense shall make payments to eligible local educational agencies that, during the period between the end of the school year preceding the fiscal year for which the payments are authorized and the beginning of the school year immediately preceding that school year, had (as determined by the Secretary of Defense in consultation with the Secretary of Education) an overall increase or reduction of—

(1) not less than 5 percent in the average daily attendance of military dependent students enrolled in the schools served by the eligible local educational agencies; or

(2) not less than 250 military dependent students enrolled in the schools served by the eligible local educational agencies.

(b) NOTIFICATION.—Not later than June 30, 2006, and June 30 of each of the next 2 fiscal years, the Secretary of Defense shall notify each eligible local educational agency for such fiscal year—

(1) that the local educational agency is eligible for assistance under this section; and

(2) of the amount of the assistance for which the eligible local educational agency qualifies, as determined under subsection (c).

(c) AMOUNT OF ASSISTANCE.—

(1) IN GENERAL.—The Secretary of Defense shall, in consultation with the Secretary of Education, make assistance available to eligible local educational agencies for a fiscal year on a pro rata basis, as described in paragraph (2).

(2) PRO RATA DISTRIBUTION.—

(A) IN GENERAL.—The amount of the assistance provided under this section to an eligible local educational agency for a fiscal year shall be equal to the product obtained by multiplying—

(i) the per-student rate determined under subparagraph (B) for such fiscal year; by

(ii) the overall increase or reduction in the number of military dependent students in the schools served by the eligible local educational agency, as determined under subsection (a).

(B) PER-STUDENT RATE.—For purposes of subparagraph (A), the per-student rate for a fiscal year shall be equal to the dollar amount obtained by dividing—

(i) the amount of funds available for such fiscal year to provide assistance under this section; by

(ii) the sum of the overall increases and reductions, as determined under subparagraph (A)(ii), for all eligible local educational agencies for that fiscal year.

(d) DISBURSEMENT OF FUNDS.—The Secretary of Defense shall disburse assistance made available under this section for a fiscal year, not later than 30 days after the date on which the Secretary of Defense notified the eligible local educational agencies under subsection (b) for the fiscal year.

(e) CONSULTATION.—The Secretary of Defense shall carry out this section in consultation with the Secretary of Education.

(f) REPORTS.—

(1) REPORTS REQUIRED.—Not later than May 1 of each of the years 2007, 2008, and 2009, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the assistance provided under this section during the fiscal year preceding the date of such report.

(2) ELEMENT OF REPORT.—Each report described in paragraph (1) shall include an assessment and description of the current compliance of each eligible local educational agency with the requirements of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

(g) FUNDING.—Of the amount authorized to be appropriated to the Department of Defense for fiscal years 2006, 2007, and 2008 for operation and maintenance for Defense-wide activities, $15,000,000 shall be available for each such fiscal year only for the purpose of providing assistance to eligible local educational agencies under this section.

(h) TERMINATION.—The authority of the Secretary of Defense to provide financial assistance under this section shall expire on September 30, 2008.

(i) DEFINITIONS.—In this section:

(1) BASE CLOSURE PROCESS.—The term ''base closure process'' means the 2005 base closure and realignment process authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) or any base closure and realignment process conducted after the date of the enactment of this Act under section 2687 of title 10, United States Code, or any other similar law enacted after that date.

(2) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—The term ''eligible local educational agency'' means, for a fiscal year, a local educational agency—

(A)(i) for which not less than 20 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools served by the local educational agency during the preceding school year were military dependent students that were counted under section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1)); or

(ii) that would have met the requirements of clause (i) except for the reduction in military dependent students in the schools served by the local educational agency; and

(B) for which the required overall increase or reduction in the number of military dependent students enrolled in schools served by the local educational agency, as described in subsection (a), occurred as a result of—

(i) the global rebasing plan of the Department of Defense;

(ii) the official creation or activation of 1 or more new military units;

(iii) the realignment of forces as a result of the base closure process; or

(iv) a change in the number of required housing units on a military installation, due to the military housing privatization initiative of the Department of Defense undertaken under the alternative authority for the acquisition and improvement of military housing under subchapter IV of chapter 169 of title 10, United States Code.

(3) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(4) MILITARY DEPENDENT STUDENT.—The term ''military dependent student'' means—

(A) an elementary school or secondary school student who is a dependent of a member of the Armed Forces; or

(B) an elementary school or secondary school student who is a dependent of a civilian employee of the Department of Defense.

Mrs. MURRAY. Mr. President, I ask unanimous consent to add Senator KENNEDY as a cosponsor of that amendment.

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

Mrs. MURRAY. I ask for the yeas and nays on amendment No. 1348.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1349

Mrs. MURRAY. Mr. President, I ask unanimous consent to lay the pending amendment aside.

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

Mrs. MURRAY. Mr. President, I ask unanimous consent to call up amendment No. 1349 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 1349.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To facilitate the availability of child care for the children of members of the Armed Forces on active duty in connection with Operation Enduring Freedom or Operation Iraqi Freedom and to assist school districts serving large numbers or percentages of military dependent children affected by the war in Iraq or Afghanistan, or by other Department of Defense personnel decisions)

At the end of subtitle E of title VI, add the following:

SEC. 653. CHILD CARE FOR CHILDREN OF MEMBERS OF ARMED FORCES ON ACTIVE DUTY FOR OPERATION ENDURING FREEDOM OR OPERATION IRAQI FREEDOM.

(a) CHILD CARE FOR CHILDREN WITHOUT ACCESS TO MILITARY CHILD CARE.—

(1) IN GENERAL.—In any case where the children of a covered member of the Armed Forces are geographically dispersed and do not have practical access to a military child development center, the Secretary of Defense may, to the extent funds are available for such purpose, provide such funds as are necessary permit the member's family to secure access for such children to State licensed child care and development programs and activities in the private sector that are similar in scope and quality to the child care and development programs and activities the Secretary would otherwise provide access to under subchapter II of chapter 88 of title 10, United States Code, and other applicable provisions of law.

(2) PROVISION OF FUNDS.—Funds may be provided under paragraph (1) in accordance with the provisions of section 1798 of title 10, United States Code, or by such other mechanism as the Secretary considers appropriate.

(3) PRIORITIES FOR ALLOCATION OF FUNDS IN CERTAIN CIRCUMSTANCES.—The Secretary shall prescribe in regulations priorities for the allocation of funds for the provision of access to child care under paragraph (1) in circumstances where funds are inadequate to provide all children described in that paragraph with access to child care as described in that paragraph.

(b) PRESERVATION OF SERVICES AND PROGRAMS.—The Secretary shall provide for the attendance and participation of children in military child development centers and child care and development programs and activities under subsection (a) in a manner that preserves the scope and quality of child care and development programs and activities otherwise provided by the Secretary.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Defense $25,000,000 to carry out this section for fiscal year 2006.

(d) DEFINITIONS.—In this section:

(1) The term ''covered members of the Armed Forces'' means members of the Armed Forces on active duty, including members of the Reserves who are called or ordered to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, for Operation Enduring Freedom or Operation Iraqi Freedom.

(2) The term ''military child development center'' has the meaning given such term in section 1800(1) of title 10, United States Code.

SEC. 654. EMERGENCY FUNDING FOR LOCAL EDUCATIONAL AGENCIES ENROLLING MILITARY DEPENDENT CHILDREN.

(a) SHORT TITLE.—This section may be cited as the ''Help for Military Children Affected by War Act of 2005''.

(b) GRANTS AUTHORIZED.—The Secretary of Defense is authorized to award grants to eligible local educational agencies for the additional education, counseling, and other needs of military dependent children who are affected by war or dramatic military decisions.

(c) DEFINITIONS.—In this section:

(1) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—The term ''eligible local educational agency'' means a local educational agency that—

(A) had a number of military dependent children in average daily attendance in the schools served by the local educational agency during the school year preceding the school year for which the determination is made, that—

(i) equaled or exceeded 20 percent of the number of all children in average daily attendance in the schools served by such agency during the preceding school year; or

(ii) was 1,000 or more,
whichever is less; and

(B) is designated by the Secretary of Defense as impacted by—

(i) Operation Iraqi Freedom;

(ii) Operation Enduring Freedom;

(iii) the global rebasing plan of the Department of Defense;

(iv) the realignment of forces as a result of the base closure process;

(v) the official creation or activation of 1 or more new military units; or

(vi) a change in the number of required housing units on a military installation, due to the Military Housing Privatization Initiative of the Department of Defense.

(2) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) MILITARY DEPENDENT CHILD.—The term ''military dependent child'' means a child described in subparagraph (B) or (D)(i) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1)).

(d) USE OF FUNDS.—Grant funds provided under this section shall be used for—

(1) tutoring, after-school, and dropout prevention activities for military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B);

(2) professional development of teachers, principals, and counselors on the needs of military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B);

(3) counseling and other comprehensive support services for military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B), including the hiring of a military-school liaison; and

(4) other basic educational activities associated with an increase in military dependent children.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Defense such sums as may be necessary to carry out this section for fiscal year 2006 and each of the 2 succeeding fiscal years.

(2) SPECIAL RULE.—Funds appropriated under paragraph (1) are in addition to any funds made available to local educational agencies under section 582, 583 or 584 of this Act or section 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703).

Mrs. MURRAY. Mr. President, I ask for the yeas and nays on amendment No. 1349.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mrs. MURRAY. Mr. President, I thank my colleagues for their consideration. I will come to the floor later to discuss both of these amendments, but essentially they deal with the children of our Guard and Reserve. I think all of us understand the impacts to families across our country. Our members from home have been called up for Guard and Reserve duty.

The first amendment I offered will help schools handle the sudden changes in student enrollment and help schools handle base closures, deployment, and force realignments. And the second amendment will make sure our military students get the counseling and support they need. Our Guard and Reserve families are spread across our States, not necessarily close to a base, and the schools are impacted across this country. When they are impacted, our children are impacted.

Both of these amendments will help all of our students in our schools make sure they reach the goals we all desire. I will be here again later to talk about both of these amendments. I thank the managers for their consideration in allowing me to call them up at this time.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent to set aside the pending amendment.

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

AMENDMENT NO. 1494

(Purpose: To establish a national commission on policies and practices on the treatment of detainees since September 11, 2001)

Mr. LEVIN. I call up amendment 1494, cosponsored by Senators KENNEDY, ROCKEFELLER, and REED of Rhode Island.

The PRESIDING OFFICER. Without objection, the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. KENNEDY, Mr. ROCKEFELLER, and Mr. REED, proposes an amendment numbered 1494.

Mr. LEVIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. LEVIN. Mr. President, this amendment would establish an independent commission on the treatment of detainees in Afghanistan, Iraq, Guantanamo, and elsewhere. U.S. policies, and too often practices, in the treatment of detainees have veered off the course which was established by decades of U.S. leadership in international humanitarian law and has been a champion of the Geneva Conventions on the treatment of prisoners of war and other detainees.

Our troops serve honorably and courageously across the globe. Their honor is besmirched when some of those who are captured are abused. Our troops' future security is jeopardized when people we detain are not treated as we rightfully insist others treat our troops when they are captured.

The amendment we are proposing today would help reaffirm the values we cherish as Americans. It would protect our troops should they be captured. It is going to be argued that there have been dozens of inquiries and hundreds of interviews and thousands of pages provided to Congress, but the fact is that huge gaps and omissions remain.

First, we do not know the role of the CIA and other parts of the intelligence community in the mistreatment of detainees or what policies apply to these intelligence personnel.

Second, we do not know what the policies and practices of the United States are regarding the rendition of detainees to other countries where they may be interrogated using techniques that would not be permitted at U.S. detention facilities.

Third, we have insufficient information on the role of contractors in U.S. detention and intelligence operations.

Fourth, the detention and interrogation of detainees by special operations forces need close examination.

Fifth, we are still missing key documents, including legal documents, from the Office of Legal Counsel.

Sixth, there are just too many significant questions which have been left unanswered.

I hope we can appoint an independent commission on the treatment of these detainees, on policies involved, patterned after the 9/11 Commission. We owe it to our military personnel who might someday be in enemy custody to demonstrate our commitment to the humane treatment of detainees, to strengthen our standing, to object and to take appropriate action against anyone who would mistreat an American prisoner of war.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wonder if I might bring to the attention of the Senate that we now have 215 amendments offered on this bill; 27 amendments have been proposed and are pending, a number desiring to have rollcall votes. I know of five rollcall votes that I think are ready to go. I ask the Senator, might we advise our leaders that we can continue tonight with rollcall votes and hopefully that can be facilitated.

Mr. LEVIN. I would have to check with our leadership on that. In terms of continuing tonight, I surely would be happy to do that, but let me check with our leaders.

Mr. WARNER. I thank my distinguished colleague because it is important that we keep momentum going forward on this bill.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I mentioned to Senator WARNER I would be saying this. He suggested the possibility of votes tonight. My response to him privately, and now publicly, is we would be happy to try to see if we could work out additional amendments that are pending where we could agree on rollcall votes tonight. I will work with Senator WARNER to see if those amendments can be identified mutually during this rollcall vote.

HONORING 15TH ANNIVERSARY OF AMERICANS WITH DISABILITIES ACT

The PRESIDING OFFICER. Under the previous order, the hour of 5:15 having arrived, there will be 15 minutes for