The legislative clerk read as follows:

A bill (S. 1079) to extend the Temporary Extended Unemployment Compensation Act of 2002.

Mr. WARNER. I ask that the Senate proceed to the measure and I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. Under the rule, the bill will be placed on the calendar.

Mr. REID. What is the business before the Senate?

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1050, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1050) to authorize appropriations for fiscal year 2004 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:

Daschle amendment No. 689, to ensure that members of the Ready Reserve of the Armed Forces are treated equitably in the provision of health care benefits under TRICARE and otherwise under the Defense Health Program.

Graham (SC) amendment No. 696 (to amendment No. 689), in the nature of a substitute.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Virginia is recognized.

Mr. WARNER. Madam President, the ranking member of the committee and myself are prepared this morning to entertain any amendments that colleagues wish to bring to the floor. I will be on the floor, and I am sure my colleague will outline a timetable for the amendments he knows of thus far on his side. On my side, there are no amendments that I know of right now. I do urge our colleagues to come forward.

The distinguished majority leader and the Democratic leader have made possible these 2 days for us to work on this bill. I know my colleague from Michigan, the ranking member, and I are ready to move right along on it. At this time, I yield the floor, hopefully for the purpose of my colleague speaking to the amendments he knows of.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I thank my good friend from Virginia. I think the business before us is to dispose of the Graham of South Carolina second-degree amendment and then the underlying Daschle amendment. I do not know if any of the opponents of the two amendments are on the floor to speak, but I think we should dispose of those. It is my understanding that after those amendments are disposed of, Senator JACK REED will be ready to proceed with an amendment.

Mr. REID. Will the Senator from Michigan yield?

Mr. LEVIN. I am happy to yield.

Mr. REID. On this side, we are ready for a vote on the Graham of South Carolina amendment. We ask that vote occur around 11:30 today, if at all possible.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I will consult with the majority leader. I will note a willingness on this side to voice-vote the Graham of South Carolina amendment.

Mr. REID. We would not be willing to do that. We want a rollcall vote on that amendment.

Mr. WARNER. The time the Senator is recommending would be?

Mr. REID. The time would be 11:30 to have a vote.

Mr. WARNER. Fine.

Mr. REID. I think we will probably only need one vote. We would accept Daschle by voice if, in fact, the Graham of South Carolina amendment passes, which I have an indication that it will. In the meantime, staff will work toward that goal with the two leaders and other people can come to the floor and offer amendments, which are certainly waiting to be offered.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. If the chairman will yield for an inquiry, if we could put in a very brief quorum call, I think I would be able to straighten out which of the other amendments might be offered while we are awaiting a vote on the Graham of South Carolina amendment. I need to make two quick calls and could then give a report.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I understand we are now on the Defense authorization bill. I will speak about a number of matters in the legislation. I also will talk about a couple of amendments I am hoping to offer. I deeply appreciate the leadership of Senator WARNER and Senator LEVIN. There are few in the Senate for whom I have higher regard. I think both of them do an extraordinary job for this country. Our country is blessed to have their leadership during these difficult times.

Much of what is in the Defense authorization bill I support. I think they have done quite a remarkable job in bringing that bill to the Senate floor. I do, however, want to talk about a couple of areas that concern me and a couple of amendments I wish to offer.

Obviously, our first responsibility in this legislation is to support a strong military for this country. This is a dangerous world. All of us understand the uncertainties in the world. We understand especially that our sons and daughters were called upon to go halfway around the world and fight in the country of Iraq. They did so with great skill and our thoughts and prayers go with them as well. We understand from that experience what these investments mean for our country, the investments in military preparedness.

Being prepared, making the investments, being able to defend our country's liberty against terrorists, aggressors, and others, is very important. The single most important threat that faces our children and our grandchildren is the threat of nuclear weapons. If there is a leader in this world that has a responsibility to stop the spread of nuclear weapons, it surely must be us. It must be the United States of America.

Some many months ago there was a story, not widely told, about a rumor. The rumor was a nuclear weapon had been stolen from the Russian arsenal and that one nuclear weapon stolen by terrorists from the Russian arsenal was to be detonated in an American city. It caused an epileptic seizure in the intelligence community: Terrorists stealing a nuclear weapon, detonating it in an American city; talk about 3,000 people dying at the World Trade Center; then talk about one nuclear weapon killing half a million people in a major American city. That is the specter of what will happen with the threat of nuclear weapons in the wrong hands.

It was discovered some time after that rumor was moving around the intelligence community that, in fact, they believed it was not credible; a terrorist had not stolen a nuclear weapon from the Russian arsenal. Interestingly enough, it was not beyond belief of most intelligence analysts that it could have happened.

We know there are thousands of nuclear weapons in the hands of the Russians. We know the command and control of those weapons is not what we would like. We hear rumors and stories about the recordkeeping for nuclear weapons in Russia being in a three-ring binder. So we worry about the command and control of nuclear weapons. We think somewhere in this world, between us and the Russians and a few others, there are nearly 25,000 to 30,000 nuclear weapons. I will say that again. Although there is not an exact known number, we expect between 25,000 and 30,000 nuclear weapons exist, both theater and strategic nuclear weapons.

The rumor that one had been stolen by a terrorist and might be detonated in an American city caused great concern. Again, the intelligence people apparently felt it was entirely possible that could have happened and, having happened, it was entirely plausible they could have detonated a nuclear weapon in an American city.

So with this arsenal of 25,000 or 30,000 nuclear weapons, both theater and strategic nuclear weapons, the question for us, our children, and their children is: Will someone someday get hold of a nuclear weapon, build one, create one, steal one, perhaps? Will those terrorists someday have access to one nuclear weapon? Will it be detonated in a city of millions of people? Will it kill hundreds of thousands of people? Or before then, will we be a world leader in trying to stop the spread of nuclear weapons, prevent the theft of nuclear weapons, improve the command and control of nuclear weapons, especially

those in Russia, and begin to reduce the stock of nuclear weapons?

Will we do that in our country? Will we send a signal to the world that nuclear weapons cannot ever again be used in anger, cannot ever again be used? The whole purpose of a nuclear weapon is a deterrent. It is not to be used.

In this legislation before us, we have provisions that talk about the development of new low-yield nuclear weapons. I think that is a horrible mistake. We have plenty of nuclear weapons. Our effort ought not to be to develop new ones. It ought to be to assume the mantle of leadership to stop the spread of nuclear weapons and begin the reduction of warheads.

In this bill, there is a provision that talks about the money that needs to be spent to study the development of a new designer bunker buster nuclear weapon. What kind of signal does that send to the rest of the world—the United States decides it wants to create a new nuclear weapon; it wants to study the design of a bunker buster nuclear weapon. We say to other countries we do not want them to have a nuclear weapon. We do not want them to develop a nuclear weapon.

We are worried about Pakistan and India. They do not like each other. They both have nuclear weapons. We are trying to say to them they cannot ever even think about using a nuclear weapon.

Yet we are saying nuclear weapons are all right, what we ought to do is develop different kinds, develop more, use them perhaps in the future against terrorists who would burrow themselves into caves. What a terrible idea. What an awful message for this country to send to the rest of the world. The message ought to be we are going to do everything that is humanly possible in the United States of America to stop the spread of nuclear weapons because our future depends on it.

We have a lot of challenges. If, in fact, North Korea is now producing additional nuclear weapons using those spent fuel rods, if, in fact, we have a country that has the capacity and is now building nuclear weapons and is perfectly willing to sell them to most anybody, can those nuclear weapons end up in the hands of terrorists 12 and 14 months from now and be used by those terrorists to threaten an American city?

The answer is yes. This is a very serious issue. Is the answer to this issue for us to be talking about developing new kinds of nuclear weapons so that perhaps we can burrow into a cave somewhere with a designer bunker buster nuclear weapon? The answer to that is clearly no. Our message, it seems to me, as a country, ought to be to the rest of the world that we want to stop the spread of nuclear weapons, and we want to reduce the number of nuclear weapons, and we want to in every single possible way say to the rest of the world nuclear weapons cannot be used, nuclear weapons will not be used.

So I am hoping to offer an amendment that will strike that money to study the development of a new designer bunker buster nuclear weapon. We cannot do that. That makes no sense to me. It is exactly the wrong message to the rest of the world. Our job is not to begin determining how we can create new nuclear weapons. Our job is to find ways to stop the spread and to begin the reduction of nuclear weapons. We have plenty—thousands and thousands and thousands. The Russians have a similar number. A few other countries also have much smaller numbers. One defection will cause a catastrophe in this world.

It just seems to me we cannot be sending a message to the rest of the world that we are seriously wanting now to develop a new kind of nuclear weapon to bust bunkers. That is just the wrong message to the world, in my judgment. I know that both the chairman and ranking member will oppose the amendment, but I believe very strongly that this country has a leadership responsibility to the rest of the world that we are strong, we are going to preserve liberty, we will fight for this country's right to preserve liberty, but part of that, in my judgment, is to produce stability in the world, to say to other countries we don't ever want to see nuclear weapons used again; we want to stop the spread of nuclear weapons and we don't want to create new nuclear weapons and do not need to create nuclear weapons. Doing so would send exactly the wrong message to the rest of the world.

There is one other issue on which I know the chairman and the ranking member will disagree. Senator LOTT and I intend to offer an amendment to strike the base closing round in 2005. The legislation approving a new Base Closure Commission in 2005 was written prior to 9/11. The shadow of 9/11 has been long and broad. It has changed almost everything. The President came to the Congress and gave one of the most remarkable speeches I think I have ever heard a few days after 9/11. He said: Everything is changed. We now fight a war against terrorism, and that war against terrorism includes a war in Afghanistan, a war in Iraq, actions in other parts of the world, and a revamping of homeland security.

The creation and revamping of homeland security in our country, it seems to me, says to us that everything has changed. We have a Secretary of Defense who wants to dramatically change the entire structure of our Defense Department and our military.

So if everything has changed, then how do we proceed with a Base Closure Commission in the year 2005 that was developed in prior to 2001? Some of us believe we need to strike that 2005 base closing BRAC commission, get our breath, evaluate what kind of future we are going to have, what kind of base structure we want, both here and abroad, but instead of rushing into a mandate that was imposed prior to 9/11, what we ought to do is remove that mandate and have the flexibility to proceed in a manner that is consistent with the new realities since 9/11.

It is interesting to me that there are so many new realities around the world. We have heavy mechanized divisions in Western Europe. Well, I understood why we would have had tank divisions, for example, when we had a Warsaw Pact and Eastern Europe was Communist and we were protecting Western Europe from the invasion of the Communists. But that, of course, is not the case any more. There is no Warsaw Pact. Eastern Europe is democratic and free in almost all cases, and so it ought to lead us to ask the question: What are we doing with those kinds of divisions in Europe?

It seems to me there is a lot for us to evaluate in base closing, but if we are going to take a look at where the excess capacities exist in our military, let us do it with the background of 9/11, understanding virtually everything has changed long after we decided to have a base closing round in 2005 and the smarter approach for us would be to step back a bit, rescind that requirement in 2005, and, with the Secretary of Defense and others, try to think through what our new reality is, what will our new force structure be, what does this new changing world require of us, and what kind of bases will be required to meet that need.

We don't know what the military will look like in 10 or 20 years from now. We don't know how big it will be, what the force structure will be. We don't know where our forces will be based.

Just recently, we had a callup of the National Guard and Reserve. God knows those wonderful citizen soldiers who leave their homes and their loved ones. The 142nd Engineering Battalion in North Dakota got 2 days' notice and dug their trucks out of the snow and put them on the road to Fort Carson, CO. The fact is they were not ready for them at Fort Carson, unfortunately, they did not have the capacity on that base to handle the 142nd when they got there.

Part of it was because the troops got backed up; they could not go through Turkey; the ships were backed up; they were not able to move soldiers out of Fort Carson, so we had people being mobilized in the Guard and Reserve going to Fort Carson, CO, and they didn't have facilities to handle them at that point.

The question is, What needs and requirements will we face in the future? We don't know. Everything is changing. Everything has changed in the last few years.

The Secretary of Defense says we should have a base closing round, one round in 2005 that closes bases, I believe he said, equivalent to the number of bases closed in the first four rounds. I do not see how he or anyone else has the knowledge to understand where we would close those bases at the moment because we don't understand what the

force structure will be, what the requirements will be. And that is not a decision just for the Defense Department. It is also a decision for the Congress.

Homeland defense may require more bases, not fewer. Homeland defense combined with the Defense Department and the efforts of both may require bases in different places, may require us to retain a base that in another area might otherwise close, may suggest you close a base in a circumstance where you otherwise might retain it. We don't know. Homeland Security as an agency is less than a year old. We have had terrorists exploding bombs around the world in recent days—Morocco, Saudi Arabia. The fact is we don't know how all of this comes together, and yet we have a mandate for a BRAC round, part of which will begin in 2004 with respect to the requirements and in 2005 we will have the commission.

Let me suggest also, in addition to the fact that I don't think it makes any sense now, in the shadow of 9/11, to continue with the requirement that was imposed prior to 9/11, especially when virtually everyone says everything has changed, I don't think it makes any sense to stubbornly stick to that requirement. We would be much better off, in my judgment, for long-term preparedness and long-term flexibility to strike that provision for the 2005 round.

Let me make one other point. We have an economy that is stuttering. Everybody understands that. The Congress and the President are struggling to try to find a way to put this economy back together. It is not producing jobs. It is losing jobs. We don't have the kind of economic growth we want or need. All of us understand that. We all understand that.

Want to talk about a retardant economic growth? Let me tell you what that is. Tell every community in this country with a major military installation, by the way, if you invest in that community, do not build an apartment building now because between now and mid-2005 that base may be closed and you have no certainty it will be there beyond 2005 or past; so make sure you do not make that long-term investment. In every community where there is a major military installation this stunts economic growth because there is a target on the front: Get out of every military installation in the country. All of them are in play. No one knows which may remain open or remain closed. This Commission will meet in 2005 and on its own make that decision. Want to stunt economic growth, retard the ability of the economy to expand? The quick way to do that is to say let's leave in place the 2005 requirement for a base-closing commission.

I guarantee, in community after community around this country, we have investors who will not, who cannot possibly make the investment in those communities because that military installation is a big part of the community and its economy and its future and they do not know whether it will be there in the future.

At a time when our economy is sputtering, to have that retardant on the economic growth of so many communities in our country, in my judgment, is totally counterproductive.

Mr. WARNER. Will my colleague be willing to engage in a colloquy?

Mr. DORGAN. I am happy to yield for a question.

Mr. WARNER. By way of senatorial courtesy, I bring to the Senator's attention the unanimous consent request drafted carefully and put into the calendar today. Would the Senator be willing to check with the Parliamentarian at his earliest opportunity?

On this amendment, the Senator is a cosponsor, I think I heard.

Mr. DORGAN. Senator LOTT and I.

Mr. WARNER. Would the Senator be gracious enough to check with the Parliamentarian? It seems to me before we get the body stirred up on the issue of BRAC, we ought to determine the relevance on that amendment with these unanimous consent requests. I say that by way of courtesy.

Mr. DORGAN. Well, I appreciate the Senator's courtesy. Of course, I am familiar that last week, perhaps for the last time, the committee has gotten unanimous consent requests for relevancy. I say ''for the last time'' because I have discovered both last evening and this morning that the amendment, as originally drafted, would be nonrelevant. Let me describe my surprise at that.

Mr. REID. Will the Senator yield?

Mr. DORGAN. Let me finish the explanation and I will be happy to yield.

The Base Closure Commission was established in this bill by this committee some years ago. One would expect the ability to strike that requirement would be in this bill. That is where it would be relevant, in this bill.

This bill itself contains provisions dealing with base closings because the bill contains some hundreds of millions of dollars in conformance with the requirements and the costs of previous Base Closure Commission actions.

I was told this morning the way our amendment is currently drafted is nonrelevant. I don't have the foggiest idea who could come up with that sort of judgment. I will not demean anyone who does, but to say there is no way on God's Earth that anybody can suggest that it is not relevant in this legislation to deal with base closing because this is where base closing came about. This is where it originated.

If the idea of relevancy is to get unanimous consent to shut people out from being able to offer amendments such as this on this bill, it is the last time—I say this again—it is the last time any committee will ever get a unanimous consent in this Senate as long as I am here during this session of the Congress on relevancy. It is the last time it will happen.

I am certainly not upset at the Senator from Virginia, but I am upset with this process because I will find a way to draft this so it is relevant and we will have a vote on it.

Frankly, I am upset that we have a Byzantine process by which someone says you cannot strike a provision that was put in the bill because it is not relevant. What on Earth are we thinking about?

I say to the Senator, your courtesy is understood. I was aware last evening and this morning that there was preparation to say to me, this is not relevant the way it is written. Then I will write it the way I hope someone around here can think clearly to say it is relevant. There is already a provision in this bill that deals with the Base Closure Commission; I can cite it.—There is no way my amendment can be nonrelevant.

I will work on that in the next couple of hours. I know the Senator from Virginia will want to oppose the amendment, as will the Senator from Michigan. I hope the Senator from Virginia will agree with me that he will not want a process by which he brings a bill to the floor, as chairman of the Armed Services Committee, and will want to prevent someone such as me who is not on the committee from offering an amendment to strike a provision put in this bill some years ago.

I don't expect that the Senator from Virginia would want that to be happening. I don't think you will want to prevent me from offering an amendment that you think is relevant. I appreciate the comment.

Mr. WARNER. Madam President, I suggest maybe a revision in your commentary. It is not in this bill. You keep referring to ''it's in this bill.''

Some years ago this bill, by the authorization committee, did contain it. I happen to have been a drafter of it. But it became law. So it is in law today. But there is no provision, to my understanding, in this bill that relates to the generic subject of the BRAC.

Mr. DORGAN. When I say ''this bill,'' I am referring generically to the Defense Authorization bill that we do each year. This bill is where the Senators who wanted to add the base-closing BRAC commission put it. It is in this piece of legislation. Generically.

Now, this bill you wrote this year that comes to the floor does not create the BRAC because the BRAC now is in law. I am trying to strike it.

Let me say, however, that on page 349 of your bill:

> For base closure and realignment activities as authorized by the Defense Base Closure and Realignment Act of 1990 (Part A of title XXIX of public law 101–510—

My point is, that portion of law is already referenced in your bill because you are proposing to spend $370 million in pursuit of certain requirements there.

My point is, it is not as if base closing as a concept or as a subject is not there. It is there.

I assume that neither you nor the Senator from Michigan—perhaps I should ask both of you. I assume that neither of you would anticipate when you propound a unanimous consent request on relevancy that you would want to prevent someone from coming to the floor to offer an amendment that is clearly relevant. I assume you would not want to try to prevent this kind of amendment.

I assume you want to prevent an element that deals with, say, CAFE standards on automobiles, having nothing to do with defense or something dealing with health care that has nothing to do with defense. That is what relevance, in my judgment, is about.

I ask the Senator from Virginia, if I may reserve my time and ask for a response, or perhaps the Senator from Michigan, did you anticipate last Thursday preventing amendments such as the amendment I was intending to offer with Senator REID on concurrent receipt, which clearly deals with the military, or the amendment that I intend to offer on base closing, is that what you intended to prevent with the unanimous consent request?

I am happy to yield.

Mr. WARNER. Madam President, the distinguished ranking member and myself at the time, with the leadership, had no specific subject or amendment in mind. We simply recognized the magnitude of this bill, some $400 billion, covering many subjects; in years past we have been on the floor, I can remember in my 25 years, 2 weeks at a time. Given the urgency of this situation, the calendar before the Senate, we thought we could best serve the institution of the Senate by proposing the Parliamentarian the decisionmaking with reference to relevancy. We had nothing in mind, I assure the Senator.

Mr. DORGAN. Let me ask this, if I might ask the Senator from Michigan. I don't disagree with you at all. I understand you don't want 100 extraneous amendments that have nothing to do with this, so you want a relevancy test.

But as I understand, the provision in law that I reference in my amendment is exactly the provision in law that is referenced on page 349, lines 16 to 19. That will now be prevented, so I will have to rewrite this amendment. The Parliamentarian says he thinks it is not relevant—their office thinks it is not relevant, ''after consultation with both the majority and minority staff of the Armed Services Committee.'' I might wonder what kind of consultation exists there. Can either of the Senators tell me?

Mr. LEVIN. If the Senator will yield, I don't know what consultation exists between the Parliamentarian and the staffs of committees relative——

Mr. DORGAN. Might I——

Mr. LEVIN. If I could just complete my statement?

Mr. DORGAN. Yes, go ahead.

Mr. LEVIN. Relative to bills that come before them.

These are complex bills. I assume they consult all the time. I cannot imagine it is unusual for the Parliamentarian to talk to either Members of the Senate or to our staff.

By the way, this requirement of relevance is not unusual. I just ask the Parliamentarian, is this an uncommon provision? It is not an uncommon provision. In fact, it seems to me, in a bill that recently came before us it had a provision, although I cannot remember which one it was—but it is not an uncommon provision. It was not intended to prevent any particular amendment.

As the Senator from Virginia said, it was just simply intended to give some kind of parameter to a very lengthy and complex bill. It was not aimed at a BRAC amendment or aimed at any particular amendment.

Mr. DORGAN. Let me ask the question further, if I might retain my right to the floor, if the Parliamentarian's office consulted with the Senator from Michigan, would the Senator from Michigan think an amendment that would strike the Base Closure Commission is not relevant to the bill?

Mr. LEVIN. I would ask the Parliamentarian for a definition of ''relevance.'' I would follow his definition. If the Parliamentarian asked me whether or not that provision was germane to the bill under the common germaneness definition, I would say, Boy, it sure sounds germane to me. But the Parliamentarian would tell me, No, sorry, that's not germane to the bill.

I don't know what the technical definition of ''relevance'' is. But it is technically defined like the word ''germane.'' It is not just a general word which is taken from the dictionary. There is a parliamentary definition of the word ''relevant.'' That is the definition which is incorporated, I believe, in every single unanimous consent request that there be a relevance standard.

Again, I repeat, and I think it is important we find this out, it is not uncommon to have a relevance standard in a unanimous consent request to limit amendments to debate so we can keep within the parameters of the bill.

If I could add one other thing, to my friend from North Dakota. It seems to me what the Senator from North Dakota may be arguing at the moment is that, in fact, his amendment is relevant, or that it could be made relevant within the meaning of the word as defined by the Parliamentarian. If so, it seems to me that takes care of the issue.

I know the Senator from North Dakota——

Mr. DORGAN. But, yes, the Senator is correct. I darn well expect to be able to offer this amendment. If I have to reword it, I will reword it. But I was trying to ask the question, Is this what you expected to try to prevent?

You say we were just trying to deal with something that was ''relevant,'' and that is a standard that existed for a long period of time. You know and I know that standard has changed over the last 20 years.

I, frankly, am surprised this morning at this. I think a number of others are as well because I don't think this is what I thought relevancy was about.

My amendment is three lines long. It repeals the base-closing round. If this is not what you intended to prevent, let me ask consent that you would agree this be deemed as relevant.

Mr. WARNER. Madam President, I would not agree with that.

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

Mr. DORGAN. I will be happy to yield for a question.

Mr. REID. The Senator is aware, is he not, that on our side we have very competent staff, Marty Paone, Lula Davis, who help us with parliamentary issues that come before this body; the Senator is aware of that, of course?

Mr. DORGAN. I am.

Mr. REID. Is the Senator aware that we have been told by them that the rulings that have been made on this bill have been a surprise to even them, in the many, many years they have served in the Senate? The new—I am talking about new in the last few days—determination of what is relevant has surprised even our very competent floor staff. Is the Senator aware of that?

Mr. DORGAN. That is correct.

Mr. REID. Is the Senator aware that, generally speaking, relevance is not germaneness? They are two totally different concepts; is that correct?

Mr. DORGAN. The Senator is correct.

Mr. REID. I was surprised, flabbergasted, disappointed last night when the amendment that you and I and Senator MCCAIN—I didn't mention his name last night and I apologize for not doing that because I was so taken aback by the ruling of the Chair—that our concurrent receipt amendment was ruled nonrelevant. That is an amendment to allow the military to receive their disability pay and their retirement pay.

I would have to think this huge bill we have here—there are copies on the desk, here it is right here—in this huge bill here, I would have to think there is something about pay for the military, about retirement pay, about disability. But the Chair ruled that was not the case.

I accept the ruling of the Chair. I do not like it, but I certainly support the statement made by the Senator from Michigan last night. I thought that was a very fair statement. We have to go along with what the Chair rules. There is no other alternative, but that does not take away that this has been a tremendous surprise, disappointment to me, and I would think to the Senator from North Dakota. Is that a fair statement?

Here is a situation that has arisen that is totally against what we have learned has been the rule of relevance. This is not some magical concept that just came out of the sky, but in the

last few hours there is a new determination of what relevance is. Is this a fair statement, I say to the Senator from North Dakota?

Mr. DORGAN. That is my feeling. I hope the Senator from Virginia and the Senator from Michigan were surprised as well.

If not, if their suggestion last Thursday of what relevance was, by unanimous consent, in effect, was to say: Oh, by the way, those of you who want to come with a base-closing round, we are not willing to fight you on that; You can't offer it; We will find a way to prevent you from offering it.

It is partly our fault. I had no idea that what you were doing last Thursday with a relevancy request, by consent, would have prevented Senator REID from offering the concurrent receipt issue. The fact is, we were going to offer the concurrent receipt issue last week on the tax bill and decided not to do that, decided to offer it here because here is where it ought to be offered.

When someone works 20 years in the military for this country and then retires and earns a retirement pay, if during that time they were disabled, what our current law says, in most cases—not all, but in most cases—is that you are not going to be able to collect your disability and your retirement; concurrent receipt is prohibited.

That is wrong. We ought to change that. Most of us know we ought to change that. The place to change that is on the Defense authorization bill. Of course it is the place to change it.

I am just as stunned that Senator REID has been told it is not relevant as I am about my amendment. I have spent more time this morning trying to figure out how on Earth someone could determine that this may not be relevant. I do not know what else that someone might want to offer here that deals directly with a defense issue, deals directly with policy in defense, will now be ruled as nonrelevant. What on Earth are we talking about here?

I hope the two of you, the chairman and the ranking member, will agree that at least those issues that appear well within the scope of what we have always thought to be relevant, and Senator REID described it exactly, about which those in our caucus who are the experts—I am not an expert on relevancy—are surprised, I hope those issues that you are preventing with a unanimous consent, at least by this latest rule, I hope we will be able to offer them.

I will try to offer to the Parliamentarian's office some version of this amendment that will meet the relevancy test. I hope I can do that. If I can't, I hope it is not your intent that relevancy should be described in the way that prevents the offering of legislation that would strike a provision that you put in the law in 1990 in this very Defense authorization bill. I hope that is not your intent.

Mr. WARNER. I have to say to my friend, I would not want him to leave the floor under the illusion that if the amendment fails to meet the requirements of the Parliamentarian, that my colleague, the distinguished ranking member, and myself, would begin to sit as a supreme court with regard to the Parliamentarian's decision and render exceptions. If we were to do that, the whole efficiency of this process would soon disintegrate and put us in an impossible situation.

The institution of the Senate relies upon the fairness and objectivity of the Parliamentarians. It is an institution since the beginning of times here. We, as Members, should not be asked or put in a position in which to overrule them, as you are fully aware.

Mr. DORGAN. The Senator from Virginia has been here longer than I have, but he understands when one comes to the floor to manage a bill with the ranking member, that there will be dozens of opportunities for you, in the next couple of days, to have unanimous consent agreements between the two of you. That is the way you manage a bill on the floor of the Senate. I am not suggesting some new approach. You will be required to ask unanimous consent for a number of things to happen on the floor of the Senate. One of those will, I hope, be to say that you want to allow to be considered on the floor of the Senate concurrent receipt, for example. I think it would be a travesty if you leave the floor, or I should say if we leave the floor—the Senate takes the floor for final vote on a Defense authorization bill, having prevented those retired soldiers who are disabled from having had a vote on this issue. What a travesty that is going to be.

I hope it will not be your intention to prevent that amendment from being offered. It is clearly right in the bull's-eye of this bill. Clearly it is.

I guarantee you, to the extent I can guarantee you as a non-Parliamentarian, that 3 years ago, 5 years ago, or 10 years ago, if this were offered on this bill, it would be relevant. We all know that. The only reason we are surprised this morning is because relevancy is changing in a way that I hope surprises you because I don't expect that you last Thursday would have wanted to prevent the concurrent receipts being debated and voted on. And I wouldn't expect that you want my amendment to be voted on. As I said before, I have great respect for the chairman and ranking members of this committee. I think they do wonderful work for this country. I have great admiration for them. I support much of what they have done. I will offer a couple of amendments. One which I very much hope you will allow to be offered is the one Senator REID, myself, and Senator MCCAIN want to offer on concurrent receipts. And one that certainly should never be prevented from being offered is on the Base Closure Commission. I have already made the comments about that amendment and why I think it is important and why I think it is timely to offer it today. I know that both Senators will object to that. But there is a very solid and strong group of Senators who feel the other way. I and Senator LOTT intend to offer this amendment to the extent that we can find a way to offer it, either by rewording it or finding a way to allow us a consent to offer it. It would be a mistake not to do this before the bill leaves the floor.

Mr. WARNER. Madam President, I think this colloquy undoubtedly is being followed by a number of colleagues. I already now have petitions by several on my side of the aisle seeking to ask whether we can go ahead and take this up even though the Parliamentarian has indicated to those Senators in a formal and appropriate way that it is acting within the description of their job function here to say the amendment fails the test. Again, I do not intend to sit here in judgment and overrule the Parliamentarian. But the Senator is perfectly willing under the rules of the Senate to seek to do that.

Mr. DORGAN. You do not have to overrule the Parliamentarian. If one were to move to do that, that would be a different issue. But by consent we can—and you know we will—do most anything on the floor of the Senate. My point is not to ask you to overrule the Parliamentarian. My point is to ask you whether you believe, whether the committee believes that it is somehow not relevant to this bill to be talking about the Base Closure Commission that was created by the Defense authorization bill in the Senate, or to be talking about concurrent receipts which affect emolument and reimbursements for veterans and retired veterans. Clearly, the Senators from Virginia and Michigan could not feel that is somehow outside the scope of this bill. If you believe it is in the scope of the bill, let us not be technical. Let us by consent allow amendments that are at the heart of this bill to be offered.

That is what I am asking. That is my point.

Mr. LEVIN. Madam President, if the Senator from North Dakota was asking me do I believe that a BRAC amendment is germane to this bill, not relevant but germane to this bill—look up the word ''germane'' in the dictionary—it sure sounds germane to me. But then I ask the Parliamentarian if it is germane, and the Parliamentarian says, no, it is not germane to this bill, and if this were a postcloture situation, it would be allowed, the Senator could get up and ask, Does the Senator from Michigan really believe the BRAC amendment should not be allowed on this bill because under the rules of the Senate it is apparently not germane? The Parliamentarian has told us that.

What intrigues me is the relevance standard which the Senator from North Dakota has raised as to whether or not, in fact, there has been a change. I use the words ''whether or not'' there has

been a change in the standard of relevancy. It seems to me that is an important issue for this body to review, as to whether there has been a change in that definition. I haven't talked to the Parliamentarian about it. I don't know. Does the Senator from North Dakota suggest that there has been a change? Whether there is, has been, would be or not, we should know as a body what the standard of relevance is and whether there has been a change and, if so, how did it come about.

I hope the Parliamentarian, given this exchange, would advise the Senate as to the standard of relevance and as to whether or not there has been a change in that standard. I am not suggesting, obviously, that the Parliamentarian speak on the floor at this point. I am suggesting the Parliamentarian advise the Senate in some written form relative to the standard of relevancy because the Senator is raising an absolutely essential issue. We use the word ''relevant'' here all the time. If there is a change in the definition of that word, then it seems to me we ought to know about it and decide whether or not we are comfortable with it.

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

Mr. DORGAN. I would be happy to yield to the Senator from Virginia.

Mr. WARNER. Madam President, let us place before the Chair a parliamentary inquiry as to whether or not there has been any change in the definition of the word ''relevancy'' as used by the Parliamentarian, say, in the last decade.

Mr. DORGAN. Madam President, the Senator from Michigan made a suggestion which is I think perhaps a better approach, to have the Parliamentarian communicate with us about that subject. I don't know.

Mr. REID. Madam President, will my friend yield?

Mr. DORGAN. I would be happy to yield.

Mr. REID. I have the greatest affection for my friend from Virginia. If there were ever a southern gentleman, he is it. But this question will not do the trick. It is like asking Al Capone if he is a criminal. I am not saying that the Parliamentarian is a criminal, but you can't ask him to defend himself. That is what this amounts to. That is what is happening, especially here in the Senate. This is not the way to do it. I say to those on that side of the aisle that I have the greatest confidence in our floor staff, as they do theirs. They are not Johnny-come-lately. They have been here a long time. They knew when this unanimous consent agreement was entered into what it was. They knew what the standard basic definition was. They are dumbfounded as to the rulings of the Chair. Marty Paone and Lula Davis—who I lived with on this floor, and spend days and weeks and months of my life, I depend on for advice and counsel every day, are dumbfounded.

I say to my friend from Virginia that to ask the Chair to determine a change in the definition in the last 2 days is not the way to go.

Mr. DORGAN. Let me make the point that there has not been a ruling of the Chair. The issue is what the Parliamentarian views to be relevant and not relevant at this point. There is an important distinction. But we don't want to have a half hour of debate on this point.

The only reason I came to the floor to talk about this was because I wanted to talk about two amendments which I wanted to offer, recognizing that one of them at this point has been described as not relevant. I was stunned by that. I expect to be able to redraft it to make it relevant. But I was especially interested in whether the managers of the bill, the chairman and ranking member, would want to prevent us from offering amendments that are so central to the Defense authorization bill. If not now, where would I offer this amendment? I ask the question: If not here, where would I offer it? Is there an alternative to offering this type of amendment somewhere else? Clearly the answer is no. If there is a place, this is the time to offer this amendment.

My hope is that working with the chairman and ranking member I will be able to do that. Quite clearly, this amendment is central to the consideration of this bill. It is right in the middle of the defense authorization. I am not coming here with some amendment that is extraneous.

My colleague from Michigan used the world ''germane'' which introduces a new subject. I thought he was going to debate that subject. But then he used that to describe its relationship to ''relevance.'' This will be lost on a lot of people in the country. But it would be lost on people as well if they understand what this bill is, and then look at the amendment that is proposed to be offered by the Senator from Nevada and the amendment that I propose to offer and hear that those somehow are not relevant to the bill. They would ask, Is there some common sense missing here someplace?

Clearly, clearly——

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

Mr. DORGAN. I am happy to yield.

Mr. WARNER. The Senator from Virginia propounded a question to the Chair. My distinguished colleague from Nevada suggested maybe we shouldn't follow that procedure.

I have now consulted with the Parliamentarian. They are prepared to answer the question propounded by the Senator from Virginia with regard to this practice over the last several years. Whatever period of time is stipulated I think is not that important. So I once again propound to the Chair the question of whether or not the means by which the Parliamentarian through the years has judged a question's relevancy—has it changed, say, in the last 5 years?

The PRESIDING OFFICER. It has not.

Mr. LEVIN. I am sorry?

Mr. WARNER. We can't hear.

The PRESIDING OFFICER. It has not.

Mr. WARNER. What did the Chair say?

Mr. REID. It has not.

The PRESIDING OFFICER. It has not changed in the past few years.

Mr. WARNER. Thank you.

Mr. DORGAN. Well, Madam President, that is patently absurd. The chairman asked—the first time he asked the question, he asked in the last decade.

Mr. WARNER. Fine. I will repeat the question.

Mr. DORGAN. No, no, no. I am not asking him to repeat the question. I have the floor.

He asked the last decade. Then he asked the last several years. Then he asked the last 5 years. The fact is, people who watch this, going back through several Parliamentarians, are surprised this is not a relevant amendment.

Relevancy is purely judgmental. If I were a Parliamentarian, a member of the Parliamentarian's Office, I would say nothing has changed in 200 years. God bless us.

Mr. REID. Will the Senator yield for a unanimous consent request?

I would like the RECORD to reflect, following the statement of the Chair, a big smile and a laugh from the Senator from Nevada based on that decision by the Chair.

Mr. DORGAN. Well, Madam President, it is hard to describe the smile the Senator from Nevada blesses us with, but if he wishes the RECORD to include that, we will do that.

Look, we have gone on long enough. My interest is in substance, not procedure. I understand the Senate operates based on procedures and precedent, but I am not very happy today because the fact is, people whose judgment I rely on are very surprised by this. I just don't have the foggiest idea—not the foggiest idea—how my ability to strike a provision that was put in this bill 2 years ago is thwarted because it is not relevant to this bill. I don't have any idea.

I would ask the question, if I can't do it now, then when can I do it? If I can't do it in this bill, then where can I do it? I don't have any understanding of that. Sometimes logic gets turned on its head. That is clearly the case here.

Now, to the Parliamentarian's Office, I say I am sorry we have this disagreement. But the fact is that what I heard this morning, both with respect to retired veterans who are prohibited from getting their disability payments—you know something, they have been shunted around this Chamber now for years—for years—and the fact is a whole lot of them deserve more than they have gotten from this Congress. These are people who served this country, earned a retirement, and then were disabled while serving their country and can't collect full disability payments. And every time we try to solve

that, there is one reason or another it can't be done.

It is just one amendment Senator REID and I and Senator MCCAIN want to offer. But it just does not make sense to me to be in this position. I hope my two colleagues, Senator WARNER and Senator LEVIN, would not intend for these amendments to be nonrelevant. They have some notion of what is relevant, what is nonrelevant in terms of what they wanted to prevent, and I assume they didn't want to prevent these types of amendments from being offered.

So I will be working with them and seeing if we can find a way through this. I will work with the Parliamentarian's Office. But I must tell you, this is the first time—I have been in this Senate for a long time. I have never come to the floor ever, not one instance I think you will find where I have come to the floor and been upset with the Parliamentarian's Office or others. I am not a complainer. But I tell you what, this defies common sense. And I think, frankly, in a quiet moment, off the floor, the chairman and ranking member would tell me they didn't intend to preclude these two amendments. And if that is the case—and I think that is the case—then they ought not be precluded, and we need to find a way to allow them to be offered.

So I will come back. I intended to come and speak to the substance and raise the question, and then try to solve it. I am sorry we got into a longer discussion than that.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ALLARD. Mr. President, I have a statement I would like to make on the bill. It is my understanding we are in order to move forward with the debate.

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLARD. Mr. President, today the Senate is considering the National Defense Authorization Act of fiscal year 2004. While there will be much debate on a few of the provisions in this bill, there is one thing we can all agree on—the defense of this Nation is our No. 1 priority.

The bill before us is a reflection of that priority. With the passage of this bill, we are saying this body is determined to ensure our Armed Forces have the resources, tools, and equipment they need to effectively combat those who threaten the United States, its interests overseas, and its friends and allies. With the passage of this bill we are saying our military personnel are the best in the world and should be paid and equipped as such. Modern equipment and sophisticated technology were certainly critical factors in recent operations. However, it was the extensive training, superb leadership, and valiant service of thousands of soldiers, sailors, airmen, marines, and coastguardsmen which has been the deciding factor time and time again.

With the passage of this bill, we are also admitting that threats to our way of life persist in many parts of the world. The global reach of terrorist networks is extensive, as demonstrated by the recent bombings in Saudi Arabia. The proliferation of weapons of mass destruction is growing. There are reports, for example, that North Korea may try to sell a nuclear weapon. These threats and others require us to remain vigilant. Our military must be prepared and ready to respond in a moment's notice.

I would like to take a few moments to draw the attention of the body to some of the more important provisions in this legislation.

Section 534 of the bill, which I sponsored, lays out several actions the Secretary of Defense and the Secretaries of each military department must take to address sexual misconduct at service academies. These include promulgating policies on sexual misconduct, conducting annual cadet surveys, and submitting a report to Congress on the board of visitors of each academy. The recent sexual assault scandal at the United States Air Force Academy highlighted the importance of being proactive and taking appropriate action at the first sign of trouble. This provision will be helpful in discovering sexual misconduct problems at the academies. This provision will also help academy leaders develop new tools for addressing sexual misconduct and give Congress and the board of visitors insight into the size and scope of the problem.

Another provision which I sponsored focuses on improving the Defense Department's management of travel credit cards. This provision builds on the purchase card legislation of Senators GRASSLEY and BYRD which was approved by this body last year in the Defense appropriations bill. Federal agencies are required by law to use purchase cards for certain transactions and travel cards for official trips. While utilization of these cards has yielded considerable savings for the American taxpayer, abuse has continued.

Recent GAO audits have reported these cards have been used at brothels, adult clubs, sporting events, and even Internet pornographic Web sites. Section 1013 will help address this deficiency. It requires the Secretary of Defense to prescribe guidelines and procedures regarding disciplinary action against personnel guilty of improper, fraudulent, or abusive use of Defense travel cards. The provision recommends to the Secretary that he consider enforcing various penalties allowed in law, including assessing a fine three times the size of the abuse, requiring the guilty party to pay court and administrative costs, and firing or court-martialing Department of Defense personnel.

Lastly, the provision requires the Secretary to report to Congress on these guidelines and provide legislative proposals should legislative action become necessary.

The bill before us also includes two provisions I sponsored regarding military voters. With the current deployments resulting from the war on terrorism, Operation Iraqi Freedom, and numerous other military actions, we must do all we can to ensure these military men and women are given every available opportunity to exercise their right to vote. I believe it is our duty to remove as many barriers as possible for military voters to be heard.

One provision included by the Armed Services Committee addresses those voters who fall through the cracks when they leave the military and move before an election but after the residency deadline. The other provision addresses problems with overseas military absentee ballots. After the 2000 election there were numerous reports of ballots mailed without the benefit of postmarking facilities. Sometimes mail is bundled from deployed ships or other distant postings and the whole group gets one postmark which would invalidate them under current law. The provision adopted will change the law so our military personnel would be ensured their votes count.

I am encouraged by the $40 million added to the President's request for formerly-used defense sites, better known as FUDS. As noted in the committee report, there are over 9,000 FUDS in the program which historically have been underfunded. The longer these sites wait to be remediated, the more expensive they become. That is why I am pleased to see the extra funds and encourage the Army to address these problems in an expeditious and thorough manner.

Turning to the provisions that originated from the Strategic Forces Subcommittee, which I chair, these provisions reflect a net increase of $85 million in procurement, a net increase of $202 million in research and development. They also reflect the requested level of funding for the Department of Energy programs and activities. The total net increase was $287 million.

These provisions fully fund the President's $9.1 billion request for missile defense. I was pleased that my ranking member, Senator BILL NELSON, and I were able to work together effectively on these issues. I am hopeful any missile defense amendments considered as part of this debate will be noncontroversial.

Significant funding actions in the committee's bill for missile defense include an increase of $100 million for the

ground-based missile defense system for additional testing and hardware improvements to reduce risk and enhance operational effectiveness, and a $70 million decrease for the ballistic missile defense system intercept project.

The bill before us also includes a number of space-related provisions that originated from my subcommittee. One would help to more fully develop an effective cadre of space professionals. Another would establish assured access to space for national security payloads as national policy.

Significant funding actions for space include the following: An $80 million increase for the GPS III, which is an advanced navigation satellite; a $60 million increase for the Advanced EHF Satellite communication system; a $60 million increase for assured access to space; and a $50 million decrease for the Advanced Wideband system, which will put this program on a sounder schedule.

There are two significant legislative provisions regarding the intelligence, surveillance, and reconnaissance, referred to as ISR. The first would require establishment of a Department of Defense ISR Integration Council, and formulation of a 15-year ISR roadmap to ensure the development of an efficient, interoperable, complementary ISR architecture for the Department.

The second reemphasizes the committee's support for the acquisition and use of commercial imagery to meet Department of Defense and Intelligence Community needs. The bill also adds funds to a number of high-priority ISR programs.

Another set of provisions originated from my subcommittee focuses on Department of Energy programs. These provisions authorize the weapons activities within the National Nuclear Security Administration at the budget request level of $6.4 million; the Naval Reactors program at $788 million; and the Defense Environmental Management program at $7.7 billion.

Another DOE provision would authorize $21 million for the National Nuclear Security Administration to begin research on advanced concepts, and $15 million of that research money will be used to continue the feasibility study on the robust nuclear earth penetrator. A repeal of the ban on low-yield nuclear weapons research and development was also included—emphasizing just the repeal, and this involved the research and development.

Mr. President, our Armed Forces are highly capable, superbly led, and devoted to the protection of the American people. During Operation Enduring Freedom, the Taliban unwittingly discovered our military has the capability to deploy and supply thousands of soldiers in the most remote of regions of the world. And during Operation Iraqi Freedom, Saddam Hussein experienced firsthand the devastating precision firepower our forces can unleash from a multitude of platforms.

Yet despite these capabilities, we cannot stand still because, most assuredly, our enemies will not. We must be determined, committed, and focused on the task before us. It is our duty.

The Armed Services Committee, under the outstanding leadership of Chairman WARNER, has spent many hours developing, analyzing, and reviewing the provisions in this bill. I also want to thank the ranking member of the Strategic Forces Subcommittee, Senator BILL NELSON, and his staff for their cooperation and leadership during our hearings and committee markup. While we may not all agree on the merits of some of the provisions, we can all agree the overall bill will go a long way toward meeting the growing needs of our men and women in uniform.

The American people depend on us, just as we depend on our Armed Forces. Let us do our duty and quickly approve this bill.

I yield the floor. Seeing no other member seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent that the pending amendment be laid aside.

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

AMENDMENT NO. 711

Mr. REED. Mr. President, I call up amendment No. 711.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself and Mr. LEVIN, proposes an amendment numbered 711.

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 provide under section 223 for oversight of procurement, performance criteria, and operational test plans for ballistic missile defense programs)

Strike section 223, and insert the following:

**SEC. 223. OVERSIGHT OF PROCUREMENT, PERFORMANCE CRITERIA, AND OPERATIONAL TEST PLANS FOR BALLISTIC MISSILE DEFENSE PROGRAMS.**

(a) PROCUREMENT.—(1) Chapter 9 of title 10, United States Code, is amended by inserting after section 223 the following new section:

**''§ 223a. Ballistic missile defense programs: procurement**

''(a) BUDGET JUSTIFICATION MATERIALS.—(1) In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element, the following information:

''(A) For each ballistic missile defense element for which the Missile Defense Agency in engaged in planning for production and initial fielding, the following information:

''(i) The production rate capabilities of the production facilities planned to be used.

''(ii) The potential date of availability of the element for initial fielding.

''(iii) The expected costs of the initial production and fielding planned for the element.

''(iv) The estimated date on which the administration of the acquisition of the element is to be transferred to the Secretary of a military department.

''(B) The performance criteria prescribed under subsection (b).

''(C) The plans and schedules established and approved for operational testing under subsection (c).

''(D) The annual assessment of the progress being made toward verifying performance through operational testing, as prepared under subsection (d).

''(2) The information provided under paragraph (1) shall be submitted in an unclassified form, but may include a classified annex as necessary.

''(b) PERFORMANCE CRITERIA.—(1) The Director of the Missile Defense Agency shall prescribe measurable performance criteria for all planned development phases (known as ''blocks'') of each ballistic missile defense system program element. The performance criteria shall be updated as necessary while the program and any follow-on program remain in development.

''(2) The performance criteria prescribed under paragraph (1) for a block of a program for a system shall include, at a minimum, the following:

''(A) One or more criteria that specifically describe, in relation to that block, the types and quantities of threat missiles for which the system is being designed as a defense, including the types and quantities of the countermeasures assumed to be employed for the protection of the threat missiles.

''(B) One or more criteria that specifically describe, in relation to that block, the intended effectiveness of the system against the threat missiles and countermeasures identified for the purposes of subparagraph (A).

''(c) OPERATIONAL TEST PLANS.—The Director of Operational Test and Evaluation, in consultation with the Director of the Missile Defense Agency, shall establish and approve for each ballistic missile defense system program element appropriate plans and schedules for operational testing to determine whether the performance criteria prescribed for the program under subsection (b) have been met. The test plans shall include an estimate of when successful performance of the system in accordance with each performance criterion is to be verified by operational testing. The test plans for a program shall be updated as necessary while the program and any follow-on program remain in development.

''(d) ANNUAL TESTING PROGRESS REPORTS.—The Director of Operational Test and Evaluation shall perform an annual assessment of the progress being made toward verifying through operational testing the performance of the system under a missile defense system program as measured by the performance criteria prescribed for the program under subsection (b).

''(e) FUTURE-YEARS DEFENSE PROGRAM.—The future-years defense program submitted to Congress each year under section 221 of this title shall include an estimate of the

amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.''.

(2) The table of contents at the beginning of such chapter 9 is amended by inserting after the item relating to section 223 the following new item:

''223a. Ballistic missile defense programs: procurement.''.

(b) EXCEPTION FOR FIRST ASSESSMENT.—For the first assessment required under subsection (d) of section 223a of title 10, United States Code (as added by subsection (a))—

(1) the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2005 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) need not include such assessment; and

(2) the Director of Operational Test and Evaluation shall submit the assessment to the Committees on Armed Services of the Senate and the House of Representatives not later than July 31, 2004.

Mr. REED. I thank the Chair.

Mr. President, there is a very simple, but important, premise underlying this amendment. I believe Congress should know the capabilities of any missile defense system that is deployed, and that these capabilities should be subject to rigorous testing. I understand this information may very well be classified, and we would receive it on a classified basis, but it is essential for us, as we make decisions about a huge program, not only in terms of dollars, but in terms of consequences to our security, that we know how capable this program is.

My amendment would request and require the Department of Defense develop measurable performance criteria for missile defense systems and an operational test plan for those systems, and an estimate of when operational testing would be done to verify the performance criteria are met. The performance criteria would include the characteristics of the threat missiles that each missile defense system is being designed to counter.

The amendment would require the Secretary of Defense to submit the performance criteria and operational test plan to the Congress each year.

The amendment would also require the Director of Operational Test and Evaluation to provide an annual assessment of the progress being made to verify, through operational testing, whether the systems are meeting their established performance criteria.

Both the performance criteria and test plans could be revised as necessary by the Department of Defense, but I do believe we need to have an idea at least of the capabilities of these systems and also, again, these capabilities must be established by operational testing.

The Patriot PAC–3 system, the only currently deployed ballistic missile defense system, conducted operational testing to prove it met established performance criteria prior to being deployed. This is the right way to develop a missile defense system; indeed, all defense programs. This amendment would model other missile defense programs on the very successful PAC–3 program in terms of performance criteria, operational testing, and then deployment.

There are a number of important things this amendment will not do. This amendment does not reduce funding for any missile defense system.

It would not prevent the administration from fielding missile defense by 2004, although, hopefully, we will have an idea of exactly what they field in 2004, and, frankly, I do not think this Congress has such an idea at this moment.

It would not dictate what performance any missile defense system should have, nor does it establish any dates for when certain performance must be attained.

It would, however, enable Congress to understand what missile defense capabilities are being bought for the $9.1 billion provided in the defense bill for missile defense. I think that is a threshold issue our constituents expect us to know. If we are investing $9.1 billion, we have to know, and the American people should feel confident we know, what are we buying, how much will it protect us against what type of threat.

I believe also it would improve the chances of developing effective missile defenses by establishing clear standards of performance.

Currently, none of the missile defense programs under development, under the Missile Defense Agency, have established performance criteria, meaning essentially there are no standards for when a system reaches any particular milestone or has completed its development. These standards did exist under the Clinton administration but were removed by the current administration.

The administration claims it cannot develop performance criteria for missile defense because the systems are too complex and difficult, and no one can predict how they will perform.

However, despite this seeming quandary about not knowing what will happen, the administration plans to field both ground- and sea-based missile defenses in 2004 and possibly an airborne missile defense by 2005. Frankly, a system that is ready to be fielded is presumably far enough along to be able to tell its performance, or one can only assume a system is being fielded without any knowledge of how it actually will work. That to me would not be a very prudent or a very wise deployment.

Other defense programs are also complex and difficult, yet they have measurable performance criteria against which they are tested. The F/A–22 aircraft program is a very complex and difficult system, as is the V–22 Osprey program. Yet both of these programs have well-established performance criteria.

In fact, all major military programs, except missile defense, have performance criteria or requirements which were approved relatively early in a system's development and revised as necessary as the program matures. I do not think it is incompatible to have a flexible system that can be adapted, yet still have performance criteria, but it seems in our discussion of missile defense these two notions are completely separated: Flexibility, innovation, seizing technological breakthroughs, and simple performance criteria. They should be part and parcel of any program we undertake.

For example, all unmanned aerial vehicle programs, such as the Predator, have requirements stating how long they need to stay aloft, how high they should fly, and how well their sensors can see. Yet this has not interfered with their innovation, their development, and their deployment.

The administration has claimed because it has adopted the new spiral development, capabilities-based acquisition approach, that establishing actual performance criteria and operational test plans is not appropriate because we just do not know for sure what missile defense capabilities will ultimately emerge. But there are a number of other spiral development programs in the Department of Defense, and all of them, except missile defense, have performance criteria and operational test plans.

For example, the Global Hawk Unmanned Aerial Vehicle, which saw service in Afghanistan and Iraq, is a spiral development program. Yet it has well-established performance requirements and a documented operational test plan.

There is absolutely no reason that missile defense should not have the same sort of yardsticks for measuring progress.

Ballistic missile programs used to have performance criteria, such as how many incoming missiles they should be able to engage, and how much area a system should defend. This enabled Congress to understand the characteristics of missile defense programs that were being funded and why they were necessary. Such criteria have been removed, and Congress does not know, for example, how many incoming missiles each missile defense system is being designed to defend against or how much area the system is being designed to defend.

Without such information, Congress is essentially writing an $8 billion to $9 billion blank check each year to the administration for missile defense.

Over the previous 2 years, Congress has tried and tried again to get the administration to provide the most basic information on its missile defense programs. Time and again, the administration has refused to provide it.

In fiscal year 2002, Congress directed the Department of Defense to provide its most basic cost, schedule and performance goals for missile defense.

We also asked the General Accounting Office to assess the progress being made towards achieving these goals.

As late as the end of fiscal year 2002, when the first GAO assessment was due, the Department had still not established a single meaningful goal for its missile defense programs. GAO was forced to write to Congress saying that it could not complete its assess because there were no goals to measure missile defense programs.

Lately, in response to continued Congressional pressure, the administration has begun to establish a few very broad, very near-term goals. But even these goals are misleading.

Secretary Aldridge, the Pentagon's acquisition chief, recently testified before the Senate Armed Services Committee that he thought the administration's 2004 missile defense would have a 90 percent chance of hitting an incoming warhead from North Korea.

Whether this is a firmly established goal or simply the individual opinion of a very sophisticated observer but nevertheless an individual opinion, it is hard to tell. Indeed, one can raise many questions about whether this 90-percent figure as a goal is being achieved and can be achieved by 2004. Secretary Rumsfeld has said in public that the 2004 system is rudimentary. Does that mean a 90-percent goal will be achieved or does it mean something less?

Indeed, if we look at the system closely, there are many issues that emerge which would suggest that this is such a situation in which there are no goals. For example, the booster for the system that is designed to be deployed in 2004 has yet to be flown in an actual intercept. So there is the question of making it work with the actual kill vehicle in an operationally feasible mode. That is a pretty significant issue when it comes to whether this system will have a certain degree of reliability.

The radar for the system was never designed for missile defense and can never be actually tested in an actual intercept attempt. The Pentagon's chief tester has told the Senate Armed Services Committee that the 2004 missile defense, in his words, has not yet demonstrated operational capability. Yet it seems clear that, regardless, there is an intention to field this system in 2004.

All of these issues raise real questions as to the capability of this system. If we accept, in fact, that it might be 90 percent, is it 90 percent of hitting a missile with defense decoys or 90 percent of hitting a missile without a decoy? These are important points that I think can be answered and should be answered by the Department of Defense as we go forward to invest something on the order of $9 billion a year in missile defense.

The administration also claims that the missile defense system it plans to field in 2004 will protect all 50 States, but if we look at the details such a defense is only possible if we have Navy ships constantly patrolling the waters of North Korea using their radars to pick up any ICBM launches headed towards Hawaii.

Initially, in the Clinton proposal there was a plan to build a very large radar designed particularly for ballistic missile defense that was intended to and had established criteria that would include protecting and covering all 50 States.

This new approach may in fact be effective, but, once again, we are not sure—the Congress is not officially on record in either an unclassified or a classified sense—of what is the standard. Is it all 50 States? Is it 50 States assuming that the Navy will have ships constantly patrolling the waters off North Korea? Indeed, it is not quite sure whether those ships can constantly be patrolling the waters off of North Korea given the numerous missions in the war on terror, given the numerous military operations. That, too, has to be looked at and examined based upon some clear criteria.

Another point is that the radar on these ships is being adapted, but it was not originally designed to identify and track ICBM-type targets. There is a question of whether the radar would be accurate enough to perform this mission.

If the Navy ships are not there, if the radar truly does not work as they hope it works or it is not modified quickly enough, there is a real question about the coverage of the system.

All of these points are being made to say in order to assess what we are buying, it helps to have these performance goals, to have them clearly delineated, to have the assumption laid out, and to have all of this operationally tested, so when we deploy a system we can say with great confidence to the American people that it will provide this level of protection. I do not think we can say that at this point.

This amendment in no way inhibits the administration from fielding a system, any type of system, in 2004, but what it will give us is an opportunity to measure that system. How effective is that system? What threats will this system engage? That type of knowledge is very important for us as we make our decisions. It is also incumbent upon the administration to provide such knowledge. Again, I emphasize it can be done either on a classified or unclassified basis because I understand there is a utility sometimes to have a system which our adversaries might assume is 100-percent effective. But at least the Congress must know this information.

The other fact of this lack of clarity and goals is it inhibits operational testing. Administrative witnesses have testified as to the need for operational testing. We have passed laws establishing operational testing. This is the traditional routine way in which we verify whether a system works and also, as we improve the system, how effective the modifications and improvements are.

Every major defense program I can think of, except missile defense, has established plans for operational testing. Without these criteria for performance and operational testing, I do not know if we can, in fact, create and deploy a system of which we can be confident.

As we reestablish these performance criteria for missile defense programs and require a plan for operational testing, Congress will regain an important tool to understand how well our missile defense program is succeeding, how our money is being spent—not our money, frankly, but the American people's money. Without such criteria and operational testing, none of that clarity will be available to us.

I think something else will be very important. It will require the Department of Defense to face squarely these tough issues: What type of threats can we defeat? How wide is the coverage of our system? What additional resources must we bring to bear to make it effective? Is this investment cost effective and cost efficient in terms of protecting the American people?

Right now all of that is very amorphous, very nebulous because there is no standard to measure it, even a general standard, these general goals I talked about. I hope this amendment could be accepted because it builds on provisions in the law that were adopted by the committee.

I commend Senator ALLEN for his efforts to include more cost data, more lifetime cycles of the cost, what it will cost to field this system. This is an attempt to build on that foundation. I hope my colleagues will see it as such, agree to this amendment, and provide the kind of goals, operational testing and clarity that are needed so we can assure the American public that when we deploy a missile defense system, it will live up at least to the standards that are disclosed to the U.S. Congress.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I rise in opposition to the Reed amendment. First, there have been a number of issues that Senator REED and myself have worked together on, and I think quite effectively. It is with considerable regret that I stand today and oppose his amendment.

It is an amendment that would add a number of reporting requirements for the Missile Defense Agency and the Office of Test and Evaluation. I cannot buy into the argument that a few good, well-thought-out regulations does the job; that if we just put in more regulations it is even better. There is a good balance we need to sustain. We have found that balance. This is an issue that in previous years has been hotly debated within the Armed Services Committee and within my subcommittee in which this issue comes out.

This year we did not have any amendment—we had some debate but no amendment in the Subcommittee on Strategic Forces, which I chair; we did not have any amendments in the full

committee. Now we are dealing with this issue in the Senate.

The Missile Defense Agency is attempting to develop an effective missile defense system as rapidly as possible. They are structuring the program to meet the threats we currently face, while recognizing that the missile threats will unpredictably evolve in the future. That is one of the problems I have with the Reed amendment, its unpredictability. To do so, the Missile Defense Agency has taken a capabilities-based approach that focused on developing a number of systems.

The Reed amendment attempts to relate ballistic missile defense element performance criteria to specific threats that these elements are designed to defeat. If it takes effect, the amendment would push the Missile Defense Agency back toward threat specific development and acquisition, away from capabilities-based development and acquisition.

Why is that a problem? We do not always understand the threat facing the United States. I can take us back to a couple of current situations where we did not understand what was happening with potential adversaries. In 1991, for example, in the Persian Gulf conflict, we got into Iraq. Only then did we begin to recognize how far along the nuclear development program was in Iraq. That was 1991. The people in the Defense Department, our experts, were surprised. People in defense intelligence were surprised. We looked back to the North Korea situation. For some time we suspected there was, perhaps, nuclear development going on but we were not able to get that confirmed until just recently where North Korea finally admitted they were developing nuclear weapons.

My point is, when we have the development of a weapons program based on what you think the threats are, it may not truly reflect what is happening. The best thing we can do is decide, for example, on missile defense, it is a capability that we need to have and we base it on the capability of being able to develop that technology so we have the best technology. That is where we get the best deterrence in a program such as the ballistic missile system.

The systems or capabilities will be upgraded on a 2-year spiral, or blocks, as the technology matures. The Missile Defense Agency is seeking to develop a single integrated missile defense system consisting of a seamless web of sensors and shooters tied together by command and control, battle management and communication systems. Each system element, such as THAAD or PAC–3 or the sea-based aegis systems, can support the other, and it makes the other more effective.

Congress has already approved a number of Missile Defense Agency reporting and process requirements in the fiscal year 2002–2003 National Defense Authorization Acts. Yet the Reed amendment requires another layer of reporting requirements.

In response to the previous 2 years of legislation, the Missile Defense Agency provided a 300-plus-page system capability specification that describes block 2004 system specifications and metrics in painful detail, including battle manager, sensor, weapons by each element such as THAAD, PAC–3, and ABL and ground-based, midcourse, among others.

ABL also provided over 1,000 pages of a 2-volume adversary capabilities document which describes all the performance characteristics that might be embodied in foreign threat missiles that U.S. missile defense systems might have to defeat. The budget justification document provides a funding breakdown by element and block—a detailed set of goals for 2004 and more general goals for block 2006 and beyond.

The amendment in question appears to require much that is already provided by the Missile Defense Agency as well as reporting that is already required by law. The Director of the Missile Defense Agency already provides performance criteria. The Director of OTNE already established and provides operational test plans for missile defense systems and also provides an annual assessment of the Missile Defense Agency test plan.

Here we are, saying a few well-thought-out regulations are good, they are fine, and we are making the assumption if a few are good, more regulations ought to be better. I don't agree with that. That takes away from and delays a program that needs to be moving forward in an expeditious and thoughtful way. What we have in the present system provides the accountability we need as lawmakers.

The other point is, when you tailor your development of your technology to the threats or perceived threats from your enemy, you will be left in the dust. We do not always know what our enemies or potential enemies are doing. We have a capability to defend this country. If we want a strong defense system, we need to move ahead with that defense system. It does have a deterrent effect.

It should be noted that the Missile Defense Agency already provides more reporting than any other program in the Department of Defense. There is no reason for Congress to require duplicative reporting on top of what is already authored or required. We cannot and should not be in the business of micromanaging missile defense.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Rhode Island.

Mr. REED. I listened to Chairman ALLARD and I commend him for his leadership on the committee's subcommittee. The committee addressed a series of issues and in this legislation they have made progress on trying to do something we are all committed to do.

I point out in terms of reporting requirements, the legislation itself includes additional reporting requirements. For each ballistic missile defense element, the production rate capabilities, the potential data availability, the expected cost, et cetera, the notion of having more reporting requirements has already found its way into the legislation.

My point is that we are not, as yet, asking effectively—we have asked before but ineffectively—for some simple language about what are the goals, and also how are we going to validate these goals through operational testing.

I do know the value of a capabilities approach but you have to ask a more detailed question: The capability to defeat what? The Missile Defense Agency can answer what they know they are not going to defeat. They have absolutely no plans at this point to be able to engage a sophisticated MIRVed weapon with multiple decoys. They tell you that flat, that is not 2004. What they will not tell us is what they prepare to engage, what they can engage.

I think, if they clearly understand they are not attempting a capability to defeat one or multiple missiles launched from a significant power, such as Russia or China, they can tell us what precisely they are engaged in trying to defeat.

So the notion about capabilities cannot be divorced from threats. That is not possible in any type of military concept. The notion they have to have a capabilities base does not excuse them from that because they defined already their capability. It is a limited capability.

So I guess I would ask the question: What are the limits to that capability?

What I am proposing is not inconsistent with the notion of capabilities in an evolving system. This amendment clearly lets them revise these criteria daily, if they like. But at least it insists that there be some criteria, some goals.

The reluctance to provide us this information has, perhaps, many reasons. One possibility is they don't know. But if they don't know this, that is even more shocking. We are spending $9 billion a year and they don't know, in the Missile Defense Agency, what type of threat they are trying to defeat with this deployment in 2004? The alternative is they know but they will not tell us, and that is equally disturbing.

Frankly, I think this amendment makes sense. It does not restrict deployment. It does not restrict funding. Every major weapons development system has goals, has operational testing plans, except for the Missile Defense Program.

I, again, urge my colleagues to accept or adopt or support this amendment because it answers a very fundamental question, a question I think every Member of this body and every American wants answered: What are we buying for $9 billion each year? How will it protect us? From what will it protect us?

I think the people of my State—capability—threats—they want to know

what this system will be valuable to do.

I am happy to yield to the chairman.

Mr. WARNER. Mr. President, I would like to ask the following question: We have a process in our committee that is not unlike what other committees do. We have our subcommittee structure where these issues are brought up and worked through the subcommittee. Then they are fully worked in the full committee in a series of two markups.

I say to my distinguished colleague from Rhode Island, one for whom I have tremendous admiration, you have been a watchdog on this subject for some period of time. I have listened carefully to the debate today.

Where I am perplexed is that in our bill, on pages 26 and 27—you need not go to that; I will just read it to you—''Oversight and procurement of ballistic missile defense,'' we enumerate a series of matters that we have in the nature of reports. This was carefully worked out by the staff of the majority and staff of the minority. Your concerns were not raised, as I understand it, at the subcommittee level. They were not raised at the full markup level. Here we are now confronting the entire Senate with the issue of whether we should go into more reporting requirements, above and beyond what is in the bill.

I say to my distinguished colleague, if you go back—for instance, last year you had similarly at the last minute, the last amendment on the bill, a series of further reporting requirements. We ended up working that out, accepting parts of it, and went ahead with the bill. But according to my calculation, the Armed Services Committee receives more than 2,000 pages of reporting each year now from the Missile Defense Agency. I repeat, 2,000 pages. We are putting more and more requirements on this Agency, requiring more and more staff on subjects which, for reasons perhaps you will give now, you did not raise in the subcommittee and you didn't raise in the full committee.

The purpose of our staffs is to try to work out and reconcile, in the course of the preparation of the bill before it is finally marked up and brought to the Senate, such matters as this. After all, reporting requirements are fairly arcane and as a general rule we try to accede to the requests of Members who feel strongly about it. Unfortunately, they pile up and become quite onerous, but nevertheless, the practice of the Senate is to accord courtesy to fellow Members.

But now we are up to 2,000 pages from one agency of the Department of Defense. To the best of my knowledge, I don't know how many people on the committee, members and staff, go through all these 2,000 pages at the moment.

Could the Senator, then, advise me as to the procedure in the subcommittee, procedure in the full committee, and why the staff didn't have these matters under their cognizance at the time they were trying to reconcile the differences and prepare the bill language on reporting requirements?

Mr. REED. I will be happy to respond to the chairman.

First, this is an issue I think is not only important but at a level where it is not just a detail of reporting. I think it goes to the heart of the accountability, not just for our committee but for the whole Senate.

Frankly, all of our colleagues have to be able to answer the question to their constituents: How much protection are we getting for these resources?

I understand the Missile Defense Agency, as so many Department of Defense organizations, is required to submit reports. But they certainly have the resources to do these reports.

What I find striking—again, it is a reflection, too, of the previous years—we have in the past tried to get this information. We required goal setting and a GAO assessment. I was, frankly, amazed—and this amazement came about in the preparation, not only for the committee markup but also coming to the floor—that the GAO simply sort of threw up its hands because the Missile Defense Agency says we really don't have any goals; we can't tell you; they are too imprecise.

So I think this is an issue that should be engaged by the entire Senate. There was no intention on my part to undermine the procedures on the committee, the Armed Services Committee or the subcommittee. I was not aware in order to bring a matter to the floor one had to offer it first in subcommittee or full committee.

I think this is an issue that is of a magnitude and of a degree of clarity that Members of the entire Senate can make a judgment and should make a judgment. That is my response.

Mr. WARNER. I take it from your reply that one Senator thinks it is a matter of enormous importance. Was there a reason it wasn't brought up in the subcommittee of jurisdiction? We have the distinguished chairman here. So those members who, on our committee, have the first—should we say the first response? I like that phrase, first response—to look at matters of this nature, if it is that important why wasn't it brought up then? Then we had the subsequent markup session. If it was that important, why wasn't it brought up then?

It seems to me that the way the members of the committee can best serve the Senate is to take those entrusted with specific subjects, put their minds on it, put it in the bill. If you had endeavored to put it in, it was rejected at subcommittee, rejected at full committee, then come on out on the floor and roll it out with all the guns and say: Look, colleagues, the committee didn't do its work.

Mr. REED. If I may reclaim my time, first, I do not assume—just on a procedural basis—that is a requirement. I think by law every Member of the Senate can offer amendments on any bill when it comes to the floor, whether you are on the committee or not. Being on the committee does not prevent you from offering an amendment if you did not offer it before.

Mr. WARNER. I am not contesting that. You recognize that. I am just pointing out, in 25 years, how the committee has to do its work.

Mr. REED. If there are procedural oppositions to the bill, that is one thing. But I think the substance is compelling enough to respond, and I think everyone here is capable to respond in substance. Either you are going to let the system continue to operate, which I think either because of—whatever number of reasons, it has not clearly identified goals and objectives, has not conducted robust testing that I think we all believe should be concomitant with the defense program. I am trying to remedy those issues. I think this is a perfectly appropriate place to introduce such an amendment, to have the committee engaged. All our colleagues are here. The staff is here. The arguments can be made here, and I hope they will be. I think it is an important issue. I am prepared to submit it to a vote. That is my understanding of the procedure.

Mr. WARNER. Mr. President, I do not in any way contest the Senator's assertion that this is an important subject. I simply ask, can't we as a committee better serve our colleagues if we make an assessment first at the subcommittee, where the members are fully conversant with all these issues, and then at the full committee where, again, members are conversant, rather than to spring it out on the floor?

If I may say to my good friend, it is almost as if the chairman of the subcommittee didn't do his work and the ranking member didn't do his work and the members of the committee didn't do their work because this matter is of such great importance because it goes to the very heart of the Missile Defense Program.

Mr. ALLARD. Mr. President, if I might make a comment or two?

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Our committee has worked and put in hours of effort and testimony on this issue of spiral development, or whether we have an inflexible program, which I think the Reed amendment leads us, to where you have specific timelines for specific parts of the system. What happens if you run into a problem in one particular part of the system? It delays the whole development.

With the spiral concept, it gives the developers of the system, the Missile Defense Agency, the opportunity to move forward in other aspects of development. It is a multifaceted system. It has to do with communications for a number of different systems and parts.

In my view, one of the problems we have had in the past, with cost overruns and whatnot, is where you have had inflexibility in the system and you

find one real problem area and then all of a sudden it ties up moving forward.

That is the whole concept between spiral development. We have had hours upon hours of this concept of spiral development. We have General Kadish and many of the individuals who are ''in the know'' testify about how important it is that we take this new approach so we can move forward with some of the more difficult and more technologically advanced programs, such as missile defense.

Again, the assumption is that we have some regulations which I think are reasonable which we put in bills in years past, and we put some more in this year's bill. The assumption has been made that if we have fewer regulations, it is better. That is not an assumption we should make. I think there is a proper balance. I think the committee has worked and studied that issue.

That we didn't have any amendments in the Strategic Subcommittee, as well as the Armed Services Committee, indicates that members of those committees having heard testimony for hours upon hours are comfortable where we are right now.

I hope we oppose the Reed amendment.

Mr. WARNER. Mr. President, may I pose a question to my colleague? I see that Senator BILL NELSON of Florida is the ranking member on this subcommittee, together with Senator BYRD, Senator REED, Senator NELSON of Nebraska, and Senator DAYTON.

The Senator has looked at this very carefully. Is there a means by which to work this out in some way—as to portions of it which you believe we will not go back over, and the issue of why it wasn't raised but now that it is raised—is there a means by which we can do it rather than taking up further time in the Senate on reporting requirements?

Mr. ALLARD. I think maybe we can sit down and have some further discussion. All of a sudden, this gets brought up on the floor of the Senate and we need some time to maybe talk with the parties.

As the Senator mentioned in his comments, we felt as if we pretty well worked this out in committee. The various members on my subcommittee who are knowledgeable on the subject, the Senator from Virginia and myself have worked out what we thought was a reasonable level of rules and regulations. Now we have an amendment that is calling for more rules and regulations. We might be able to work it out. I think we need some time. I hope this could be set aside at least for the time being to give us an opportunity to kind of work this issue a little bit more on the floor of the Senate and then perhaps come back to it at a later time.

Mr. WARNER. Is that an acceptable offer?

Mr. REED. Mr. President, I have no opposition to taking some time prior to coming forward to see if we can reach an agreement, if we can't ask for a vote. I have absolutely no opposition to setting aside and working it to try to come up with something with which we feel comfortable.

Mr. WARNER. Mr. President, I ask unanimous consent that the amendment be laid aside with due diligence and good faith to see what might be added. I will come back to the 2,000 pages.

Mr. LEVIN. If the Senator will withhold that for a moment, I would like to add one quick comment on this amendment as to what the stakes are.

First, I want to commend Senator REED for bringing this amendment to the attention of the Senate. This is not, in all fairness, simply a reporting amendment. This is not just more reports. This tells the Missile Defense Office to adopt performance criteria which are measurable, adopt an operational test plan for your systems, adopt a timetable, all of which can be changed any time they want to. I don't think it is fair to characterize this as some inflexible thing which is laid upon the Ballistic Missile Defense Office. It is highly flexible. It just tells the Ballistic Missile Defense Office to do whatever other program managers do, of every major weapons system—adopt a measurable performance criteria and adopt an operational test plan, including some kind of timetable. It is neither inflexible, nor is it unusual.

I don't know of any other major weapons system that does not have these kind of criteria. I just didn't agree with that characterization of it. Where I do agree totally with our chairman is that if there is a way to work this matter out, it should be worked out. This is an important system. The issue is no longer whether a ballistic missile defense is going to be fielded. That is not the issue anymore. The question now is whether it will have any kind of performance criteria by which it can be judged. That is the issue.

It seems to me we ought to be grateful as a body to the Senator from Rhode Island for bringing to our attention the fact that these important measurements are absent. But in fairness, I think it is not simply more reports to the Congress. It is saying to the Ballistic Missile Defense Office: We want you to adopt performance criteria that are measurable. It is not a matter of reporting to us. It is a matter of doing it for yourself and for the American people. That is what the issue is here. Send us a copy, by the way, will you?

Mr. WARNER. I simply say to my colleague that if there was a serious issue in the function of the Missile Defense Agency, in your judgment—and you attach enormous importance to this—why did we not consider it in the course of the subcommittee hearing?

Mr. LEVIN. There are all kinds of amendments that have not been considered. Senator REED is one human being who has taken upon himself a huge amount of material to digest and present to the committee. He did a magnificent job. I think my good friend from Virginia would agree with that. There are other things which, as a matter of time, one is not able to put together and present to the committee at that moment but which are important to present to the entire Senate. I don't think we can fault Senator REED in that regard. That is purely a matter, it seems to me, of what human limitations might be in terms of what one human being can do. But he surely did more than his share in terms of the work that was presented to the committee.

Mr. WARNER. It simply says: Agency, if it is that important in your judgment in reporting, it goes to the very heart of the oversight process. We should have raised it in subcommittee, adopted an amendment of this type, and worked it out.

I was told the staff worked very closely with one another on the provisions we did put in the bill as to reporting on missile defense which we believed was a closed-out item.

Mr. LEVIN. It is always ideal to try to bring matters before the committee. The chairman knows I agree with him on that. Sometimes it is not possible just it terms of the workload to do that. I don't think we can fault any member of the committee if and when that load is such that they have to present it to the floor because they were not able to get together in place all the material at the time of the committee hearings. The Senator from Rhode Island would be involved in the debate on many nuclear weapons systems even though those matters in some cases were brought to the attention of the committee.

There are new formulations just because new thinking has been brought to bear since our committee hearings and markup on those subjects.

But, in any event, I fully concur with the Senator from Virginia. If we can possibly work this out to fill in an omission in what the Ballistic Missile Defense Office should be doing, which is to develop these performance criteria which are measurable for this major system to have an operational test plan for this major weapons system, it seems to me if that can be worked out either over lunch or during the afternoon, I fully concur with the chairman that we ought to do that.

Mr. WARNER. I thank both of my colleagues. We have had a good colloquy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I want to clarify. We are putting this aside for a period of time to work on this. But if we can't reach—and I hope we can—an understanding, we will have a vote, I presume, early in the evening.

I think that is correct.

Mr. WARNER. Those are matters we delegate to the leadership, the majority leader, and the Democratic leader.

There is no way we will deny you a vote, if we fail to work it out.

Mr. REED. I will endeavor to reach an understanding, and hopefully we can.

Mr. LEVIN. Mr. President, parliamentary inquiry. Is the Reed amendment now laid aside? Has that action been taken?

The PRESIDING OFFICER. That is correct.

Mr. LEVIN. So that we now at this point have three amendments which are laid aside, and there is no amendment which is pending before the Senate, is that correct?

The PRESIDING OFFICER. I believe there are two first degrees and a second-degree amendment laid aside.

Mr. LEVIN. Did the Chair say two first-degree amendments and one second degree?

The PRESIDING OFFICER. That is correct.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Is the Republican manager of the bill ready to move forward on any unanimous consent requests?

Mr. WARNER. We are about to work out a timing for the vote on the Daschle-Graham or Graham-Daschle amendment. I simply ask that the 5 minutes equally divided be expanded to 10 minutes, so I think we are prepared to go ahead and set that, if that is the desire of the leader.

Mr. REID. That would be certainly fine.

Mr. WARNER. I believe we will propound that UC in a moment. In the meantime I will attend to some other housekeeping matters.

## MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business.

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

## AUTHORIZING LEGAL COUNSEL REPRESENTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 147 which was submitted earlier today and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 147) to authorize representation by the Senate Legal Counsel in the case of John Jenkel v. Bill Frist.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WARNER. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 147) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 147

Whereas, Senator Bill Frist has been named as a defendant in the case of John Jenkel v. Bill Frist, No. C–03–1235 (MEJ), now pending in the United States District Court for the Northern District of California;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now therefore, be it

*Resolved,* That the Senate Legal Counsel is authorized to represent Senator Frist in the case of John Jenkel v. Bill Frist.

## AUTHORIZING LEGAL COUNSEL REPRESENTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 148 which was submitted earlier today and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 148) to authorize representation by the Senate Legal Counsel in the case of John Jenkel v. 77 U.S. Senators.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WARNER. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 148) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 148

Whereas, in the case of John Jenkel v. 77 U.S. Senators, No. C–03–1234 (VRW), pending in the United States District Court for the Northern District of California, the plaintiff has named as defendants seventy-seven Members of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now therefore, be it

*Resolved*, That the Senate Legal Counsel is authorized to represent the Members of the Senate who are defendants in the case of John Jenkel v. 77 U.S. Senators.

Mr. MCCONNELL. Mr. President, these resolutions concern pro se civil actions commenced in the United States District Court for the Northern District of California by the same plaintiff. The first resolution concerns a suit that the plaintiff has brought against seventy-seven Members of the Senate claiming that their votes approving the joint resolution authorizing the use of military force against Iraq violated the law. Included among the 77 defendants plaintiff has sued are the new Members who were not even in the Senate at the time of the vote on the resolution authorizing the use of force.

This suit is without merit as the court has no jurisdiction over the matter and the Speech or Debate Clause bars suits against legislators for the performance of their legislative duties under the Constitution. There is simply no legal basis for suing Senators for their role in authorizing the use of military force against Iraq. While a Senator's vote on whether to authorize the use of military force by the President is an appropriate subject for political debate, it cannot be the basis for filing a lawsuit against the Senator in court.

The second resolution concerns a lawsuit filed by the same plaintiff against Senator FRIST for allegedly failing to schedule for consideration by the Senate the repeal of provisions enacted as part of the Homeland Security Act of 2002. This suit is also without any merit as the court has no jurisdiction over the matter and the suit is barred by the Speech or Debate Clause. Senator FRIST's decisions on the agenda and schedule for the legislative business of this body do not present a justiciable issue for the courts.

These resolutions authorize the Senate Legal Counsel to represent the Senate defendants in these two actions.

Mr. REID. Before we go into the quorum call, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. WARNER. I yield the floor.

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

The Senator from Nevada.

## IRAQI AND AFGHAN WOMEN

Mr. REID. Mr. President, over the past year and a half I have spoken on many occasions of including women in the reconstruction of Afghanistan. Since then we have seen the inclusion of two women cabinet members give hope to the women of Afghanistan. We have also learned the inclusion of only two women is certainly not enough. Greater representation of women is necessary in Afghanistan. Likewise, Iraqi women should play some part, and I believe an important one, in the rebuilding of their country. Iraqi