The PRESIDING OFFICER. The Senator is correct.

Mr. KERRY. Mr. President, I send a bill to the desk for appropriate referral to the committee.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

(The remarks of Mr. KERRY pertaining to the introduction of S. 1993 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006—Continued

AMENDMENT NO. 2507

Mr. KERRY. Mr. President, sometime later today when we dispose of a few of the next amendments, Senator LEVIN, on behalf of leadership and a group of Senators on our side of the aisle—and we hope others might join in—will be submitting an amendment with respect to the issue of Iraq. I am pleased to join in that with them. I look forward to participating in that debate at that time. I have come to the Senate at this moment to introduce an amendment that lays out what, in my judgment, represents a comprehensive and new strategy that is essential for the President to implement in order to successfully complete the mission in Iraq, as well as to bring our troops home in a reasonable timeframe.

At a news conference a week ago I referred to this in a speech I gave recently. I left Iraq departing on a C–130 from Mosul, together with Senator WARNER and Senator STEVENS. The three Senators and the staff, all of us, were gathered in this cavernous C–130. In the middle of the cargo hold was a simple aluminum coffin with a small American flag draped over it. We were bringing another American soldier home to his family and to his resting place.

The starkness of the coffin in the center of that hold, and the silence—except for the din of the engines; believe me, there was a kind of silence notwithstanding—was a real-time, cold reminder of the consequences of decisions for which all of us as Senators bear responsibility.

As we enter a make-or-break 6-month period in Iraq, that long journey of that soldier and 2,000-plus more of them remind us, all of us, about our responsibilities with respect to the troops in Iraq. It underscores the need to help this administration take steps that will bring our troops home within a reasonable timeframe from an Iraq that is not permanently torn by conflict.

Some say we should not ask tough questions because we are at war. I say, no. A time of war, that is precisely when you have to ask the hardest questions of all. It is essential, if we want to correct our course and do what is right for our troops, that instead of repeating the same mistakes over and over again, we ask those questions. No matter what the President says, asking tough questions is not pessimism. It is patriotism. We have a responsibility to our troops and our country and our conscience to be honest about where we should go from here.

There is a way forward that gives us the best chance to both salvage a difficult situation in Iraq and to save American and Iraqi lives. With so much at stake, we all have a responsibility to follow the best way forward.

No. 1, we cannot pull out precipitously, as many argue and call for, but also we cannot merely promise to stay as long as it takes. The promise simply to stay as long as it takes, in fact, exacerbates the situation. It is not a policy. To undermine the insurgency we must, instead, simultaneously pursue a political settlement that gives Sunnis a real stake in the future of Iraq, while at the same time reducing the sense of American occupation. That means a phased withdrawal of American troops as we meet a series of military and political benchmarks, starting, I have said, with a reduction of 20,000 troops over the holidays as we meet the first benchmark—the completion of the December elections.

Earlier today, my good friend, the Senator from Arizona, Mr. MCCAIN, made a speech in which he mischaracterized my plan to bring our troops home within a reasonable timeframe and to succeed in Iraq. He mischaracterized how one arrived at 20,000 troops. The fact is, that is a benchmark. It is a benchmark set by this administration itself. The fact is, most of last year, during which time the administration says we have adequate troops to do the job, we had about 138,000 troops in Iraq. The fact is, for the purposes of the constitutional referendum and for the purposes of the election, the administration upped the number of troops in order to guarantee security for the purpose of those two events.

I have said specifically that when those two events are completed successfully, and with the increased numbers of Iraqis trained, there is no excuse for not being in a position to go from the current 161,000 down to the 138,000, where we were before, where our generals told us we had enough troops to do the job. That figure is set not by any arbitrary standard but by the accomplishment of the specific benchmark.

It is also critical that we send this signal to the Iraqi people that we do not desire a permanent occupation and that Iraqis themselves must fight for Iraq. History shows again and again that guns alone do not end an insurgency, and guns alone, particularly, will not end this insurgency. The real struggle in Iraq is not what the President has described again and again as the war on terror as we know it against al-Qaida. The real struggle in Iraq is Sunni versus Shiite. It is a struggle that has gone on for years with oppressor and oppressed, and it will only be settled by a political solution. No political solution can be achieved when the antagonists can rely on indefinite large-scale presence of occupying American combat troops.

The reality is our military presence in vast and visible numbers has become part of the problem, not just the solution. Our own generals are telling us this in open hearings of the Senate. Our generals understand this well. GEN George Casey, our top military commander in Iraq, recently told Congress that our large military presence ''feeds the notion of occupation'' and ''extends the amount of time that it will take for Iraqi security forces to become self-reliant,'' and Richard Nixon's Secretary of Defense, Melvin Laird, breaking a 30-year silence, writes:

> Our presence is what feeds the insurgency, and our gradual withdrawal would feed the confidence and the ability of average Iraqis to stand up to the insurgency.

It comes down to this: An open-ended declaration ''to stay as long as it takes,'' lets Iraqi factions maneuver for their own political advantage by making us stay as long as they want. It becomes an excuse for billions of American tax dollars to be sent to Iraq and siphoned off into the coffers of cronyism and corruption.

When I was last in Iraq, at a dinner put on by the Ambassador and others with the Minister of Defense—the Minister of Interior, the Prime Minister, and others—we sat and listened while they told us themselves of the corruption that has been taking place in the disbursement of American taxpayer funds.

This administration needs to pay attention to that corruption. The administration must also use all of the leverage in America's arsenal—our diplomacy, the presence of our troops, our reconstruction money, all of the diplomacy—in order to convince the Shiites and the Kurds to address the legitimate Sunni concerns about regional autonomy and oil revenues and to make Sunnis accept the reality that they will no longer dominate Iraq. We cannot and we should not do this alone.

The administration must immediately call a conference of Iraq's neighbors: Britain, Turkey, other key NATO allies, and Russia. The absence of legitimate international effort with respect to this is, frankly, absolutely extraordinary. I am not alone in calling for that. Republicans, colleagues on the other side of the aisle, Senator HAGEL, others, have talked about the need for an international leverage in order to help resolve this issue. Together we have to implement a collective strategy to bring the parties in Iraq to a sustainable political compromise that also includes mutual security guarantees among Iraqis. To maximize our diplomacy, the President should appoint a special envoy to bolster Ambassador Khalilzad's commendable efforts.

To enlist the support of Iraqi Sunni neighbors, we should commit to a new

regional security structure. I have heard from countless numbers of members of government in the region that the old security arrangement that existed prior to the invasion of Iraq has, in fact, been altered by that invasion. And today there are great uncertainties with respect to the Gulf States—Kuwait, Saudi Arabia, and obviously uncertainties with the saber rattling of Iran and the problems with Syria. We ought to be committing our efforts to create a new regional security structure that will include improved security assistance programs, joint exercises, and provide a greater confidence to the region about long-term strategy.

To show Iraqi Sunnis the benefits of participating in the political process, we should press these countries to set up a reconstruction fund specifically for the majority Sunni areas. The absence of specific economic transformation remains the heart of one of the reasons for people to move toward insurgency rather than the governance process. We need to also jump-start our lagging reconstruction efforts by providing necessary civilian personnel to do the job, standing up civil-military reconstruction teams throughout the country, streamlining the disbursement of funds to the provinces, expanding job creation programs, and strengthening the capacity of government ministries.

Prime Minister Blair, a few weeks ago, suggested that different countries actually adopt a ministry. I know in the Ministry of Finance there are precious few U.S. personnel helping that finance ministry to be able to do the job of administering payrolls and managing the budget of the country. It is unbelievable that at a time when our troops are making such a valiant effort to provide for this transformation we are absent the kind of diplomatic and civilian personnel necessary to make those things happen.

On the military side, we must make it clear now that we do not want permanent military bases in Iraq. We still have not done that. In the absence of doing that, we lend credence to the notion of occupation and of long-term designs on oil, on land, or other designs. Those lend themselves to the recruitment process.

The administration must immediately give Congress and the American people a detailed plan for the transfer of military and police responsibilities on a sector-by-sector basis to Iraqis so the majority of our combat forces can be withdrawn—ideally as a target by the end of next year.

Simultaneously, the President needs to put the training of Iraqi security forces on a 6-month wartime footing and ensure that the Iraqi government has the budget to deploy them. The administration should accept the longstanding efforts and offers of Egypt, Jordan, France, and Germany to do more training. They should prod the new Iraqi government to ask for a multinational force to help protect Iraq's borders until a capable national Army is formed. And that force, if sanctioned by the United Nations, could attract participation by Iraq's neighbors and countries like India, and it would be a critical step in stemming the tide of insurgents and money into Iraq, especially from Syria.

Finally, we must alter the deployment of American troops themselves. I believe deeply that special operations obviously need to continue. They must continue in order to pursue specific intelligence needs and in order to ferret out those jihadist and other hard-core insurgents that we have in Tehran. But the vast majority of our troops could easily move to a rear guard, garrison kind of status in order to provide security backup. You do not need to send the young Americans on search-and-destroy mission that invite alienation and deepen the risks they face.

If the President were to do this, then the Iraqis would far more rapidly, according to our own generals, begin to assume the responsibilities which we are asking them to and which they need to and which, in the end, are the only way to be successful.

If the President refuses to move in this course, ultimately it is our responsibility, the U.S. Congress, to debate and ultimately help to put this policy in the right direction. If we take these steps, there is, frankly, no reason that within 12 to 15 months we couldn't be able to take on a new role—a role as an ally, not an occupier. And only then will we have provided our troops with what they really deserve, which is leadership equal to our soldiers' sacrifice.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Virginia.

Mr. WARNER. Mr. President, in consultation with the ranking member, we are anxious to move now to further debate on the Kerry amendment. For that purpose, if we could get an estimate of the amount of time that might be required and we could proceed to the second-degree amendment.

Could the Senator advise the managers how quickly we could proceed with the resolution of your amendment, first and second degree to be offered by Senators Roberts and Rockefeller, short debate on that, and such final debate as needed on the underlying amendment, and move to a vote?

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I would like to help the distinguished manager move the process as rapidly as possible. Senator ROCKEFELLER has just pulled me aside. I will spend a few minutes with him now in the cloakroom, and we will try to report back as fast as we can. I hope we can dispose of it. If we were to proceed under a quorum call until then, it would be helpful.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, to help clarify the situation: Is it the proposal that there be two amendments voted on?

Mr. WARNER. Mr. President, that is correct, I say to my distinguished colleague. The proposal, eventually is that you will have some sort of a——

Mr. KERRY. My understanding is we are talking about a second-degree amendment; is that correct?

Mr. WARNER. That is correct, but then, as we have with others, if it is desired by the three principals here, to do it in a side-by-side fashion. There is a parliamentary means to do that.

Mr. KERRY. Mr. President, if I could have a chance to work with Senator ROCKEFELLER, we may just have one vote.

Mr. LEVIN. That would be better.

Mr. WARNER. Fine. In that event, 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. KERRY. 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. KERRY. Mr. President, I ask unanimous consent that I be able to reserve the time on my amendment, but that we set the amendment aside and proceed immediately to the second-degree amendment of Senator ROBERTS and Senator ROCKEFELLER.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

The Senator from Kansas.

AMENDMENT NO. 2514 TO AMENDMENT NO. 2507

Mr. ROBERTS. Mr. President, I rise to offer a second-degree amendment, along with the vice chairman of the Senate Select Committee on Intelligence, Senator ROCKEFELLER, in regard to reporting language for certain intelligence activities.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS], for himself and Mr. ROCKEFELLER, proposes an amendment numbered 2514 to amendment No. 2507.

Mr. ROBERTS. 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 require a report on alleged clandestine detention facilities for individuals captured in the global war on terrorism)

In lieu of the language proposed to be inserted, insert the following:

SEC. ____. REPORT ON ALLEGED CLANDESTINE DETENTION FACILITIES FOR INDIVIDUALS CAPTURED IN THE GLOBAL WAR ON TERRORISM.

(a) IN GENERAL.—The President shall ensure that the United States Government continues to comply with the authorization, reporting, and notification requirements of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(b) DIRECTOR OF NATIONAL INTELLIGENCE REPORT.—

(1) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall provide to the members of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives a detailed report setting forth the nature and cost of, and otherwise providing a full accounting on, any clandestine prison or detention facility currently or formerly operated by the United States Government, regardless of location, where detainees in the global war on terrorism are or were being held.

(2) ELEMENTS.—The report required by paragraph (1) shall set forth, for each prison or facility, if any, covered by such report, the following:

(A) The location and size of such prison or facility.

(B) If such prison or facility is no longer being operated by the United States Government, the disposition of such prison or facility.

(C) The number of detainees currently held or formerly held, as the case may be, at such prison or facility.

(D) Any plans for the ultimate disposition of any detainees currently held at such prison or facility.

(E) A description of the interrogation procedures used or formerly used on detainees at such prison or facility.

(3) FORM OF REPORT.—The report required by paragraph (1) shall be submitted in classified form.

Mr. ROBERTS. Mr. President, the Senate did create the Select Committee on Intelligence as a unique means to provide oversight of our sensitive activities in regard to intelligence. I agree with Senator KERRY that more information will improve our ability to conduct the oversight we need to do on intelligence.

Senator ROCKEFELLER and Senator WARNER and myself, however, believe this intelligence oversight function should remain focused in the Select Committee on Intelligence, as intended by S. Res. 400, the legislation that actually created the Intelligence Committee back in 1976.

I can assure my colleagues that the membership of the Senate Intelligence Committee is designed to include significant crossover membership from the various national security committees. For example, I am one of the several Armed Services Committee members currently on the Intelligence Committee, including Senator WARNER and Senator LEVIN. That construct was intentionally created by the Senate to address situations just like this.

Transparency is important and open government is critical, but in certain circumstances sensitive information must be handled in a proper way. That is exactly why we created the Committee on Intelligence. This amendment strikes the appropriate balance between the Senate's needs for transparency and the need to handle sensitive information appropriately.

Accordingly, I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, will the chairman yield for a question?

Mr. ROBERTS. Certainly.

Mr. BIDEN. Mr. President, I have no debate or disagreement about what the Senator said. I was wondering whether the chairman and the cochair, the Democratic chair, would object to—maybe this is not the appropriate place to do it—a second-degree amendment, or an additional amendment, whatever form it would take, that would require not the intelligence community but the State Department to report to the Foreign Relations Committee on the status of their judgment as to whether we are in compliance with international treaties—their view on that matter.

I don't want to be the skunk at the family picnic. I am not trying to cause any difficulty. But it seems to me that such an approach would not in any way fly in the face of the intelligence community reporting to the Intelligence Committee. The Senator is right—historically, the various committees, including the Foreign Relations Committee, have been represented on the Intelligence Committee. I have no argument with that. I wonder whether any of my friends could respond to that concern I have raised.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Reclaiming my time, let me say to the Senator, he is welcome to the picnic any time he wants to come. I believe we have resolved this matter in response to the original amendment regarding this subject. Senator KERRY and Senator ROCKEFELLER and Senator WARNER and I have crafted a second-degree amendment that will be accepted by Senator KERRY. I recognize the unique concern in regard to the Senator from Delaware. I would hope we could dispense with this first and then enter into a discussion as to the merits of the Senator's concern.

Mr. BIDEN. Parliamentary inquiry: If we dispense with the second-degree amendment, is there any ability to further amend this legislation? This is a substitute or a second degree?

Mr. ROBERTS. This is a second-degree amendment, I inform my colleague.

The PRESIDING OFFICER. The second degree is drafted as a substitute, if it is adopted.

Mr. BIDEN. If it is adopted, and I am not saying I will, but will the Senator from Delaware have an opportunity to amend the substitute?

The PRESIDING OFFICER. No.

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

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

Mr. ROBERTS. I would simply say that my colleague would have ample opportunity to offer an amendment in its own standing, and this carefully crafted compromise should receive priority attention.

I yield to the distinguished Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, we can solve this if we do the following: First, the amendment of the Senator from Delaware, which is a good amendment, is outside of the jurisdiction of the Intelligence Committee. It is not something that involves the Intelligence Committee. It is really a separate judgment. My suggestion would be, since we are trying to dispense with this fairly expeditiously, if we were to modify now the amendment simply to say that it is not a substitute but, rather, only a second degree, immediately upon disposition of that second degree, I could accept the second degree of the Senator from Delaware, at which point we could have a vote on the final amendment, as amended. Would that be satisfactory?

Mr. WARNER. Mr. President, we would need to examine the second-degree amendment by the distinguished Senator.

Mr. KERRY. Could we have an agreement now that we would modify the amendment as submitted so that it is a second degree, not a substitute, but simply a second degree?

Mr. WARNER. Mr. President, I would defer to the distinguished chairman of the Intelligence Committee.

Mr. ROBERTS. As I have indicated or as has been indicated by the distinguished chairman, the subject matter before us now pertains to the jurisdiction of the Intelligence Committee. The amendment, as I understand it, of the Senator from Delaware does not. I would rather go ahead with the agreed-upon method, and then we could take a look at the amendment and handle that separately.

Mr. KERRY. We would simply modify the title ''substitute.'' We are not changing any of the substance of what we have agreed on, nor will it change the procedure which we are going to follow. This amendment, with respect to the Intelligence Committee, will be disposed of separately, freestanding now. But if we don't change the title of the substitute, then the Senator from Delaware is closed out, and we don't have the right to amend it. This is a technicality.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I believe that we are dealing with an important unknown; that is, the content of what the distinguished Senator from Delaware wishes to put on. May I make this suggestion, without any prejudice to this colloquy and honest effort to resolve it, if we were just to lay aside the Kerry amendment, go to another amendment, and then at such time as there is reconciliation of viewpoints, I think we could then perfect his amendment to whatever is needed and proceed.

Mr. KERRY. Before we do that, 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. 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.

Mr. WARNER. The group that is working on the Kerry amendment, with the proposed Roberts-Rockefeller second degree, is working diligently, but it is important that we continue on the bill. At this time, I ask unanimous consent that the amendment by the Senator from Massachusetts be laid aside and that the Senator from South Carolina be recognized for the purpose of offering an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Is it my understanding that upon the disposition of the next amendment, this will be the pending business?

Mr. WARNER. That can easily be arranged.

Mr. KERRY. Can we have that?

Mr. WARNER. I so ask.

The PRESIDING OFFICER. That will be the order pending further action of the body.

Mr. WARNER. I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

AMENDMENT NO. 2515

Mr. GRAHAM. Mr. President, I call up amendment No. 2515 which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for himself, Mr. KYL, and Mr. CHAMBLISS, proposes an amendment numbered 2515.

Mr. GRAHAM. 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: Relating to the review of the status of detainees of the United States Government)

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

SEC. ___. REVIEW OF STATUS OF DETAINEES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees, and to the Committees on the Judiciary of the Senate and the House of Representatives, a report setting forth the procedures of the Combatant Status Review Tribunals and the noticed Administrative Review Boards in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay.

(b) PROCEDURES.—The procedures submitted to Congress pursuant to subsection (a) shall, with respect to proceedings beginning after the date of the submittal of such procedures under that subsection, ensure that—

(1) in making a determination of status of any detainee under such procedures, a Combatant Status Review Tribunal or Administrative Review Board may not consider statements derived from persons that, as determined by such Tribunal or Board, by the preponderance of the evidence, were obtained with undue coercion; and

(2) the Designated Civilian Official shall be an officer of the United States Government whose appointment to office was made by the President, by and with the advice and consent of the Senate.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees of Congress referred to in subsection (a) a report on any modification of the procedures submitted under subsection (a) not later than 30 days before the date on which such modifications go into effect.

(d) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

''(e) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien outside the United States (as that term is defined in section 101(a)(38) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(38)) who is detained by the Department of Defense at Guantanamo Bay, Cuba.''.

(2) CERTAIN DECISIONS.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any decision of a Designated Civilian Official described in subsection (b)(2) that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the procedures and standards specified by the Secretary of Defense for Combatant Status Review Tribunals.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to any application or other action that is pending on or after the date of the enactment of this Act. Paragraph (2) shall apply with respect to any claim regarding a decision covered by that paragraph that is pending on or after such date.

Mr. GRAHAM. Mr. President, will you notify me when I have used 15 minutes of the time?

The PRESIDING OFFICER. The Chair will so notify the Senator.

Mr. GRAHAM. Mr. President, this whole debate we are having now with Senator KERRY, what we did with Senator MCCAIN's amendment earlier, and what I am trying to do, is a healthy debate about where we are going as a nation, how we prosecute the war on terror, and what kind of value set we are going to adopt.

One thing we need to understand as a nation and we need to understand in the Senate, in my opinion, is that the attack of 9/11 was an act of war. It was not a criminal enterprise. That is an important statement to make. Every Senator needs to understand in their own mind: Was 9/11 and were those who planned it and those who blew up the people in Jordan yesterday common criminals or are these people engaged in acts of terrorism and war? Let it be said clearly, in my opinion, that the United States is at war with al-Qaida and associate groups, and we have been since 9/11.

When a country such as the United States is at war, we have a rich tradition of following the law of armed conflict, of living up to the Geneva Conventions and all other international treaties that regulate the conduct of war. We have a moral imperative as a nation not to lose our way in fighting this war. Using tactics of one's enemy is no excuse in defeating one's enemy.

It is clear to me from Abu Ghraib backward, forward, and other things we know about that at times we have lost our way in fighting this war. What we are trying to do in a series of amendments is recapture the moral high ground and provide guidance to our troops. That is why Senator MCCAIN's amendment, which I cosponsored, is so important, and it passed by voice vote.

The McCain amendment requires standardization of interrogation techniques when it comes to people in our charge, not as criminal defendants but as enemy combatants, people detained on the battlefield, POWs. It requires the Army Field Manual, not the United States Code, to be changed in a way to give our troops the guidance they need as to what is in bounds and out of bounds when it comes to interrogating prisoners. It is important that we get good information. It is equally important that we not lose our value set in obtaining that information.

Senator MCCAIN has two things in his amendment that we desperately need. It standardizes interrogation techniques for the military, dealing with people who are part of this war, our enemies, and it also makes a statement to every other agency in the Government that you are going to treat people humanely if they are captured under your charge as part of fighting this war.

Guantanamo Bay is a place we have designated to take people off the battlefield and hold them, and the determinations that go on at Guantanamo Bay fall into two categories. Some can be prosecuted for violations of the law of war, not criminal violations in

terms of domestic criminal law but violations in terms of the law of war. Enemy combatants are being held at Guantanamo Bay like POWs were held in the past. What we have done at Guantanamo Bay is we have set up a procedure that will allow every suspected enemy combatant to be brought to Guantanamo Bay and given due process in terms of whether they should be classified as an enemy combatant.

The Geneva Conventions in article V state that if there is a doubt about one's status, the host country, the person who is in charge of the person, the suspected enemy person, that host country will have a competent tribunal to determine the status.

What is going on at Guantanamo Bay is called the Combat Status Review Tribunal, which is the Geneva Conventions protections on steroids. It is a process of determining who an enemy combatant is that not only applies with the Geneva Conventions and then some, it also is being modeled based on the O'Connor opinion in Hamdi, a Supreme Court case, where she suggested that Army regulation 190–8, sections 1 through 6, of 1997, would be the proper guide in detaining people as enemy prisoners, enemy combatants. That regulation is ''Enemy Prisoners of War, Retained Personnel, Civilian Internees, and other Detainees.'' We have taken her guidance. We have the Army regulation 190–8, and we have created an enemy combat status review that goes well beyond the Geneva Conventions requirements to detain someone as an enemy combatant.

The McCain amendment says if you are an enemy combatant, we will treat you humanely, even though you may be part of the most inhuman group the world has ever known. Senator MCCAIN is right. How we treat detainees in our charge once they are captured is about us, but their legal status is about them. Once they choose to become part of a terrorist organization in an irregular force that blows up people at a wedding, then their legal status is about them and their conduct.

I want to make sure we follow the law of armed conflict, that we comply with the spirit of the Geneva Conventions, that we do it right because we are a country that believes in doing it right. I believe the Congress needs to get involved. We have been AWOL.

I have enjoyed working with Senator LEVIN and my Democratic colleagues, Senator WARNER, Senator MCCAIN, and others to get the Congress involved. Here is what we have done. The Congress is now setting interrogation standards that have long been overdue and neglected. The Congress is now setting a humane treatment standard that will serve us well in the international community. The Congress, through my amendment, is now getting involved in the enemy combatant detention process.

People worry about taking folks to Guantanamo Bay and never hearing from them again. I can assure you they can be heard from. They are being heard from. They are being inspected in terms of their treatment by the International Red Cross. I have been to Guantanamo Bay twice. If you worry about what is going on at Guantanamo Bay, go down there yourself. The press has access to Guantanamo Bay. The International Red Cross has access to Guantanamo Bay. My amendment gets Congress in the ball game.

My amendment requires that Combat Status Review Tribunal regulations have to come to the Senate and the House for our review. Congress now is looking over the shoulder of what is going on there.

My amendment requires that the person sitting at the top of the pyramid who makes the decision to release or detain has to be confirmed by the Senate so they will be accountable to us.

My amendment prohibits the use of undue coerced statements to detain somebody as an enemy combatant.

If you are a POW in a war, you are there until the war is over. An enemy combatant falls into that same category, and we are going to make sure they get due process accorded under international law and then some, and the Congress is going to watch what happens. The Congress is going to be involved, and we are going to take a stand. We are going to help straighten out this legal mess we are in.

But there is another problem. For those who want to treat people in our charge humanely, sign me up. For those who want to get Congress involved in making sure we have standardized interrogation techniques so our own troops won't get into trouble, sign me up. For those who want to give enemy combatants due process in accordance with the Geneva Conventions, and then some, sign me up. For those who want to turn an enemy combatant into a criminal defendant in U.S. court and give that person the same rights as a U.S. citizen to go into Federal court, count me out. Never in the history of the law of armed conflict has an enemy combatant, irregular combatant, or POW been given access to civilian court systems to question military authority and control, except here.

What has happened at Guantanamo Bay that we need to fix? I know what we need to fix in terms of the way we have treated prisoners. We are doing it. We are getting it right. We are making up for our past sins. My request to this body is, let's not go too far and create problems that will come back to haunt us. We are at war; we are not fighting the Mafia. We are fighting an enemy desirous of taking us down as a nation.

The Supreme Court decided that the Guantanamo Bay activity was part of the United States, not in its territory so much as under its control. The Supreme Court has been shouting to us in Congress: Get involved.

Habeas corpus rights have been given to Guantanamo Bay detainees because the location is under control of the United States, and Congress has been silent on how to treat these people. The Supreme Court has looked at section 2241, the habeas statute, and they are saying to us: Since you haven't spoken, we are going to confer habeas rights until you act.

Justice O'Connor said that we will under habeas give due process to enemy combatants, but if you were smart, you would have a process like Army regulation 190–8, and that would be more than enough. Well, we are smart.

Here is what has happened. If you want to give a Guantanamo Bay detainee habeas corpus rights as a U.S. citizen, not only have you changed the law of armed conflict like no one else in the history of the world, I think you are undermining our national security because the habeas petitions are flowing out of that place like crazy. There are 500-some people down there, and there are 160 habeas corpus petitions in Federal courts throughout the United States. Three hundred of them have lawyers in Federal court and more to follow. We cannot run the place.

They are not entitled to this status. They are not criminal defendants. And here is what they are doing in our courtrooms:

A Canadian detainee who threw a grenade that killed an army medic in a firefight and who came from a family of longstanding al-Qaida ties moved for preliminary injunction forbidding interrogation of him or engaging in cruel, inhumane, or degrading treatment of him. It was a motion to a Federal judge to regulate his interrogation in military prison.

Another example. A Kuwaiti detainee sought a court order that would provide dictionaries in contradiction of Gitmo's force protection policy and that their counsel be given high-speed Internet access at their lodging on the base and be allowed to use classified DOD telecommunications facilities, all on the theory that otherwise their right to counsel is unduly burdened.

This is one of my favorites. There was a motion by a high-level al-Qaida detainee complaining about base security procedures, speed of mail delivery, and he is seeking an order that he be transferred to the least onerous conditions at Gitmo and asking the court to order that Gitmo allow him to keep any books and reading materials sent to him and to report to the court on his opportunities for exercise, communication, recreation, and worship.

Can you imagine Nazi prisoners suing us about their reading material?

Two medical malpractice claims have come out of this.

Here is another great one. There was an emergency motion seeking a court order requiring Gitmo to set aside its normal security policies and show detainees DVDs that are purported to be family videos.

Where does this stop? It is never going to stop.

Let me tell you what it is doing. Here is a quote from one of the lawyers representing these detainees in Federal court:

> We have over one hundred lawyers now from big and small firms working to represent these detainees. Every time an attorney goes down there, it makes it that much harder for the U.S. military to do what they're doing. You can't run an interrogation . . . with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

Know what. The people at Gitmo are asking that same question: What are we going to do? It is impossible to interrogate people with this much court intervention. We are undermining the role Gitmo plays in helping our own national security. No POW enemy combatant in the history of the world has been given Federal court unlimited access as an American citizen.

Here is what I propose we do: that we take the procedures that are in place far beyond what the Geneva Conventions require, that we make the reforms my amendment suggests where Congress is now involved in oversight, and we do one other thing, we allow a detainee to go to Federal court, not anywhere and everywhere, but to one place, the Circuit Court of Appeals for the District of Columbia where they can challenge what the military has done to them in terms of their status.

That is a right beyond what any enemy combatant POW has ever had in history. That will make sure two things happen: My amendment will make sure Congress will supervise what goes on and will be notified about what happens at Gitmo. They will be able to hold people off the battlefield as enemy combatants; they will have a process recognized by the Geneva Conventions and then some; and they will also have a right to go to Federal court to challenge their status to make sure we did it right.

If we will do these things together, then we can be proud as a nation. They all need to be done together. We need to make sure standardized interrogation techniques exist for the benefit of our own troops in the Army Field Manual to create clarity out of chaos. We need to make a statement as a nation that no matter who you are or where you are, if you are in our charge, you are going to be treated humanely.

Shaikh Mohammed, the mastermind of 9/11, is somewhere in our care. He is not a criminal defendant. He is a warrior, the planner of 9/11. It is not a decision we should have to make to try him or let him go. We keep him off the battlefield as we have kept every other POW and enemy combatant off the battlefield. We get good intelligence from him and we treat him humanely. Let us not turn this war into a crime. It would be a crime to do so.

I think I have presented what I believe to be as balanced an approach as I know how without giving up our right to defend ourselves. To the human rights activists out there, God bless you. You have helped us in many ways. We are going to make the statements you want us to make about treating people humanely. We are going to have standardized interrogation techniques. Congress is going to provide oversight and we are going to let the courts provide oversight. But in the name of human rights, we are not going to let this jail run amok. We are not going to create a status in international military law that has never been granted before. Of all the people in the world who should enjoy the rights of an American citizen in Federal court, the people at Guantanamo Bay are the last we should confer that status on. We did not do it for the Nazis. We should not do it for these people.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. COLEMAN). Who yields time?

Mr. LEVIN. I yield 10 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I thank my colleague from Michigan. I rise to speak in opposition to this amendment as currently drafted. After the Senate deals with this amendment, I will offer a second-degree amendment to remove the problematic language that I believe is included. First, I commend Senator GRAHAM for taking on the issue of treatment of these prisoners in Guantanamo. He did work with Senator LEVIN, myself, and others, I am sure, to try to improve the procedures for processing prisoners at Guantanamo. We agreed upon some language. We included that language. He proposed it and it was included in the Defense appropriations bill. That was agreed to. Unfortunately, here he has taken that language and he has modified it. He has added to it. His additions are a terrible mistake.

His amendment now also contains a provision that strips aliens at Guantanamo of any right to seek habeas corpus in our Federal courts. The right to file a petition challenging the legality of a prisoner's detention was specifically recognized by our Supreme Court in the Rasul case. Considering that many prisoners have been held there for over 3 years, that the administration has argued they can be held there indefinitely, it would be a major mistake for us to remove the very limited judicial review the Supreme Court has recognized that these prisoners still have.

The writ of habeas corpus, which is what his amendment would eliminate, which is in essence a right to petition the court to review the legality of one's detention by the Government, is at the core of civil rights in this country. It came originally from the Magna Carta. Our Founding Fathers wrote this into our own Constitution. In the first article of the Constitution, in Section 9, it says:

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

Our Founding Fathers wanted to ensure that the Government could not simply imprison people at will and that there was judicial review that would be available as a check on that executive power.

When the executive branch detains or imprisons a person within the jurisdiction of the United States—and that is all we are talking about here, detaining someone within the jurisdiction of the United States—the Government, upon the issuance of a writ by a court, must show cause why that person is being detained. This right is enshrined in our own Constitution. It would be a terrible mistake for us to suspend that right as an amendment on a Thursday afternoon to the Defense authorization bill.

This is an extremely serious issue. There have been no hearings on this issue in the Judiciary Committee. I see the chairman of the Judiciary Committee on the Senate floor this afternoon. If we are going to seriously consider suspending the privilege of habeas corpus, of filing a petition for habeas corpus, the Judiciary Committee should be the committee that considers that type of a proposal and has hearings on it.

There have been no hearings in the Armed Services Committee. It would be a terrible mistake for us to do this sort of as a by-the-way kind of amendment on a Thursday afternoon as we are preparing to leave for the weekend.

Through our history, Congress has suspended the ''great writ,'' as it has been called in Anglo jurisprudence for centuries now, only on very few occasions. Abraham Lincoln suspended the writ during the Civil War in order to imprison suspected southern supporters. During the Second World War, President Roosevelt unilaterally suspended the writ in order to imprison more than 70,000 Japanese Americans in prison camps. This Congress has since gone on record indicating its regret at that action taken by this Government.

Today, the executive branch has once again asserted extraordinary powers. The President has argued that he has the authority to indefinitely imprison anyone, whether a citizen or noncitizen, that he deems to be an enemy combatant, and the judicial review of such decisions is not needed or appropriate.

It is in times such as these that our Founding Fathers envisioned that habeas corpus would be preserved. According to the Wall Street Journal article earlier this year, an estimated 70 percent of individuals held at Guantanamo were wrongfully imprisoned. BG Jay Hood was quoted as saying in that article: Sometimes we just did not get the right folks.

This is not the time Congress should suspend the writ and grant the executive branch additional unchecked authority.

The administration has gone to great lengths to avoid the legal restraints

that normally would apply under our legal system. They have argued that the laws of war are not applicable because we are fighting a new type of enemy. They have argued the criminal laws are not applicable because we are fighting a war. The administration position is that there is a rights-free zone where the President has complete authority to detain and hold individuals indefinitely.

Within this framework, the administration argues that the prohibition on torture is an unnecessary barrier. They argue that the Geneva Conventions are outdated, that constitutional rights do not exist for this group of individuals. In essence, they argue that the rights of these prisoners, if any, are at the discretion of the President.

According to press reports, in deciding where they wanted to hold suspected terrorists, the administration has gone to enormous lengths to avoid putting them some place where they would be under the jurisdiction of our courts. They considered Soviet-era detention centers in Eastern Europe, secret facilities in Thailand, Egypt, Jordan, and Zambia. They finally settled on putting them at Guantanamo in Cuba because, as the Secretary of Defense said, it was the least worst place. It also had the advantage, they thought, of giving them a plausible argument that they were outside the reach of the U.S. courts on the theory that since this was Cuban territory, if these prisoners had objections or problems they could always seek redress from the Cuban Government. That was the argument our own Department of Justice made in our courts.

Of course, the Supreme Court disagreed in the Rasul case and held that Guantanamo prisoners do have the right to challenge the basis of their detention in U.S. Federal court.

As I understand it, the number of prisoners facing trial today is about 10. That is 10 out of the 500 prisoners who are being held there. The rest are being held without charges. There is no prospect for them being charged in the near future that I am aware of.

The President and the administration in this country have a credibility problem with regard to our detention policies. The administration says one thing regarding its position on torture. We appear to do something different. We all watched as the President toured Latin America last week and reassured our allies at every stop that, in fact, it is not the policy of our Government to engage in torture. We are on the defensive on an issue that should not be an issue in this country.

We can effectively combat terrorism without resorting to these types of techniques, and we can do so in a manner consistent with American values. Our Nation's longstanding commitment to the respect of law, to the rule of law, and basic human rights is founded on a set of values that distinguishes us from terrorists and it is important that we keep those principles and those values intact as we pursue this war on terrorism.

This is not the time to back away from the basic principles this country was founded on. Considering the ambiguity that exists with regard to the legal status of so-called enemy combatants and the revelations that have come out regarding secret prisoners, irregular rendition, torture and abuse, I believe it would be a tragic mistake to further limit the ability of our courts to provide the minimal judicial review that has been afforded thus far. The world has come to doubt our Government's commitment to the rule of law as a result of many of the actions I have recounted. Let us not provide an additional basis for those doubts by stripping our Federal courts of the right to consider petitions for habeas corpus.

I urge that this amendment be defeated. If appropriate, after consideration of this amendment, I have an alternative amendment which would enact the first three sections of Senator GRAHAM's amendment as we passed them on the appropriations bill but would delete the portion that strips the Federal courts of jurisdiction.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BINGAMAN. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Michigan for yielding me 10 minutes.

The issues presented by the Graham amendment are very important, and I commend Senator GRAHAM for taking the initiative in offering this amendment. This is an issue which this Senator has been wrestling with for some time.

Shortly after 9/11, on February 13, Senator DURBIN and I introduced legislation which would have dealt with the military commission procedures. This is pursuant to the provisions of article I, section 8, clauses 10 and 11 of the Constitution, which confers upon the Congress the power ''To define and punish . . . Offenses against the Law of Nations; . . . make Rules concerning Captures on Land and Water.''

Early this year, after becoming chairman of the Judiciary Committee, in collaboration with the distinguished ranking member, Senator LEAHY, we took up this issue.

We held a hearing on June 15 this year, which I had sought continually in 2002, 2003, and 2004. I believe this was the first hearing to deal with these issues. In line with that effort, I traveled to Guantanamo Bay in mid-August. I had the expectation of having a hearing and making progress to really come to grips with the complex issues which are involved here.

These issues are very difficult. When you talk about detainees and their status as an enemy combatant, you first wrestle with the problem of what evidence is there. It is very hard to quantify any of the evidence. You talk about competent evidence, which we are familiar with in a courtroom—here there is none. Hearsay is permitted, but it is impossible to put your hands on what the hearsay is. There are some suggestions that on the battlefield somebody who is known and trusted to our forces would just identify: You, you, and you are enemy combatants; and it would stick. These detainees are then held for the duration.

There is no doubt that these detainees are the worst of the worst. That is the way they have been characterized. We are facing very difficult problems with these terrorists. Some of them have been released, and they have gone back to Afghanistan or gone back to Iraq, so we are fighting them all over again. It is a very difficult problem.

Finally, the Supreme Court of the United States came down with three decisions in June of 2004, which were a patchwork, really a crazy quilt, of decisions. Now you have the Supreme Court of the United States again undertaking jurisdiction in the Hamdan case, which challenges the Presidential authority to set up the commissions. It does so on the ground that the Geneva Convention says that there must be a tribunal who makes the determination of enemy combatant status.

The question raised in the circuit court—this opinion got a lot of notoriety because Chief Justice Roberts, then Judge Roberts of the circuit court, was on the panel—dealt with the issue as to whether there had to be a tribunal. That is what the district court said. The circuit court overruled the district court's ruling that the President was not a tribunal. Although it is hard to fashion the President as a tribunal, I do realize that the President has to act to protect the country.

These are the kind of weighty problems which we have not sorted through, quite frankly. I have discussed this matter with the Senator from South Carolina. He is on the Judiciary Committee and participated in the hearing which we held. He took a good bit of what we had found and worked with it in the Armed Services Committee. That is the way it should be. But when you undertake to remove habeas corpus, you better know where you are, and you better have a comprehensive plan and a comprehensive way of dealing with the issue which deals with evidence and which deals with the right of counsel.

Detainees do not have the right to counsel. I can understand why the Department of Defense does not want to give detainees the right of counsel. But we have not come up with an answer as to how the detainees ought to be handled. The detainees are reviewed only once a year. We have submitted draft legislation to the Department of Defense, as we worked on this issue in

June, July, August, and through the fall. A number of the suggestions which we made were incorporated by the Department of Defense. I think they have been moving in the right direction. They have changed the commission so that the presiding judge is no longer a fact finder or juror, but functions more like a judge. Changes in the Classified Information Act have occurred.

But until we can sort through these issues and find a comprehensive approach which deals with them—and we should be doing that—the Judiciary Committee will still be wrestling with these problems. But it is well known that we have been busy since we took up this issue with a June 15 hearing. In July we had the nomination of Roberts, and we had the nomination of Miers, and now we have the nomination of Alito. We have had so many matters: class actions, bankruptcy and asbestos and judicial nominations, that we have not been able to come to grips with all of the issues.

Candidly, it is very hard to deal with the Department of Defense on these matters. When we were in Guantanamo on August 1, we took up an issue that the New York Times had publicized, on August 1, where three officers had said that the trials were rigged by the military. We sought information from the Department of Defense on an inspector general's report and on an internal investigation. There was delay after delay after delay, as we tried to find out what was going on. It was very difficult. This is sort of a pattern, where the Department of Defense wants to do it their way and is very resistant to congressional inquiries and to congressional oversight.

While it is a collateral matter, it bears on some of the work by the Judiciary Committee on Able Danger. There we have, notwithstanding commitments by the Department of Defense, not been able to get important information.

I see the Presiding Officer edging forward. Is my time about to expire?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. SPECTER. I thank the Chair. But I am not prepared, at this stage, to support legislation which calls for removal of habeas corpus. The issues on detainees and military commissions have been pending since 9/11 of 2001. Until the Judiciary Committee held a hearing in June 15 of 2005, nothing had been done by Congress. The Supreme Court finally took the bull by the horns and came down with the three decisions in June of 2004 because the Congress had not acted. It didn't know what to do. It didn't know quite how to approach it. And perhaps it was too hot to handle. But the Congress frequently is inactive in the face of assertions by the executive of the need to defer to Presidential power. But I believe that the habeas corpus provisions which are now in effect need to be maintained.

While the three decisions by the Supreme Court in June of 2004 did not answer the problem, they did get us started. Their movement in the Hamdan case is again significant. My own thinking, as chairman of the Judiciary Committee, is to try to find answers to these complex issues.

When the Senator from South Carolina decries the numerous habeas corpus appeals, I know what that means. I was a district attorney of a big city, 30,000 cases a year, with a lot of convictions and a lot of habeas corpus matters. The Federal Government can handle the habeas corpus provision. But I read in the revised statute that there are going to be appeals.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SPECTER. I ask for an additional 2 minutes.

Mr. LEVIN. I yield those 2 minutes.

Mr. SPECTER. When I read in the bill of the Senator from South Carolina about appeals to the court of appeals of the District of Columbia from detainee status, that opens up a brand new Pandora's box. You have existing procedures under habeas corpus which we currently understand, but if you provide for a new jurisdiction for the circuit court of appeals for detainees' appeals than that could make it worse.

I think this probably requires a lot more analysis. We have an able Senator from South Carolina who sits on both Judiciary and Armed Services. We are going to continue to work on it, but I do not think this amendment is the answer.

I thank the Senator from Michigan for yielding me the time and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 12½ minutes.

Mr. GRAHAM. I yield 6 minutes to my colleague from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, let's go back to the fundamentals of what actually happened and what the amendment of the Senator from South Carolina would actually do. The Congress did not create laws to deal with terrorists, primary to the beginning of the war on terrorism. Questions arose as to the executive branch's treatment of these terrorists in detention. Absent congressional direction, the U.S. Supreme Court had to interpret an existing statute, section 2241. It held that, since Congress had not expressed any intention outside of section 2241 in interpreting that section, the courts had jurisdiction to consider habeas corpus petitions regarding the status of these detainees. That is all that the Court has held.

As Justice Scalia said in his dissent, ''the petitioners do not argue that the Constitution independently requires jurisdiction here.'' So let's be plain, that the Great Writ does not apply to terrorists. No one argued in the Rasul case that the Constitution required habeas corpus petitions. It was, rather, a matter of statutory interpretation. As the Justice said:

> Accordingly, the case turns on the words of section 2241.

How did the Court in the majority opinion treat that?

> Considering that section 2241 draws no distinction between Americans and aliens held in Federal custody, there is little reason to think that Congress intended it not to apply . . .

The bottom line is that the Congress has, on numerous occasions, statutorily limited the writ of habeas corpus to American citizens. In 1996, when the courts were plugged up with habeas petitions, Congress passed a substantial revision of the habeas corpus laws, reducing this backlog of habeas petitions in Federal court from U.S. citizens. We have the statutory jurisdiction to write whatever kinds of laws we want. We clearly have the statutory jurisdiction to say it does not apply to foreign terrorists. And nothing in the Rasul case says otherwise.

So let's be very clear about this Great Writ. It does not apply to terrorists, and it should not apply to terrorists, and nothing in this amendment goes any further than to say it applies to U.S. citizens. It does not apply to terrorists.

Another argument is that we should not suspend the writ of habeas corpus. We are not suspending the writ of habeas corpus. It does not apply. The only reason the Court in Rasul said the Court had jurisdiction to consider it is because the language in 2241 was not explicit enough to exclude the aliens, the terrorists who were detained at Guantanamo Bay from asserting that jurisdiction.

Third, our chairman, Senator SPECTER, has said we need a comprehensive way to deal with the prisoner claims. And he is absolutely correct about that. And this amendment provides such a mechanism.

What Senator SPECTER says is: I'm not sure that we should be granting a circuit court of appeals review right.

That's a pretty good right, I would say. That's what this amendment does. Either we are arguing we are not giving these detainees enough rights or we are giving them too many rights, but let's get one or the other here. I think what we are doing is granting a substantial right to appeal the issue of status when, first of all, it is determined by the CSRT procedures in the military tribunals at Guantanamo Bay and then there is an automatic right to appeal this, not just to a Federal court but to the U.S. court of appeals, on the record. That is a substantial right.

But what we have gotten rid of are these hundreds of habeas petitions that will be clogging the Federal courts. We have already seen them making medical malpractice claims against the doctors, saying they want one kind of food as opposed to another kind of food and so on. It is going to get like it did

with prisoners. One of the real-life cases that came out of Arizona that we tried to take care of in 1996 law is a prisoner said: I want chunky peanut butter, I don't want creamy peanut butter. And that was the habeas petition. You have a right to question food in a habeas petition. Do we want our Federal courts clogged with terrorists making these kind of petitions? No.

As a result, what Senator GRAHAM has done here is very sensible, to say there is going to be a military tribunal to determine status. By the way, it is reviewed every single year. When that status is first determined, there is an automatic right to appeal to the U.S. Court of Appeals for the District of Columbia. But the writ of habeas corpus, which has never been intended to apply to prisoners of war, much less terrorists, does not apply in this case.

We are not going to clog up the courts with habeas corpus petitions. You can have an automatic right to the circuit court of appeals.

It gets us back to the point that Senator GRAHAM made in the beginning. Let us recognize that we are not dealing with criminal defendants. We are dealing with people who have committed acts of war against the United States. They certainly should not be accorded greater privileges than U.S. citizens or prisoners of war.

A final point: There has been a suggestion by some that this would somehow undercut the McCain antitorture amendments. I think Senator GRAHAM laid that to rest. But make it crystal clear. Under McCain, there is not private right of action. They are enforced by the constitutional requirement that the President take care that the laws be executed. The Graham amendment does not take away the right of action to enforce McCain because there is no right of action to enforce McCain in the McCain amendments.

This is a very good amendment. It gets us back to the basics of what kind of folks these terrorists are. It grants them substantial rights to contest their status but not the right to clog up Federal courts.

Mr. LEVIN. Mr. President, I yield 2 minutes to the Senator from Vermont.

Mr. LEAHY. Mr. President, I am always concerned that when they speak of terrorism we are constantly adding new things to our laws to show how we are opposed to terrorists. Maybe it would be easier to just to pass a resolution 100 to 0 saying we are all opposed to terrorists. Of course, we are.

I also remember when it was written and attributed to Benjamin Franklin at a time when he and other Founders of this great Nation faced the hangman's noose. Had they failed in their efforts to create a democracy instead of trade, their liberties for security deserve neither.

We should go very slowly when we want to make changes on the great rift.

The distinguished chairman of the Judiciary Committee is absolutely right. We should oppose this amendment.

We made a major change in the habeas corpus laws a few years ago when we were looking at that to see how that works.

This is not the time nor the place nor the bill to willy-nilly—that is really what it is—make this change in the habeas corpus law. There are just too many things going on—whether it is the reports in the press about us using secret prisons that had been abandoned by the old Soviet Union following criticism of every President, Republican or Democrat, in my lifetime, that we are now using that, to questions that are raised and appropriately raised about Guantanamo.

I have heard it said here that the Red Cross has available to them all prisoners, that the press has available to them all prisoners—we have found that isn't so—and prisoners are spirited out in the middle of the night to these secret prisons.

Let us stand as a country that believes in the rule of law.

I hope we stand with the senior Senator from Pennsylvania in opposing this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, if the Senator from South Carolina would defer to the managers, I would like to address the Senate in connection with a unanimous consent request. My understanding is that it has been cleared on both sides.

I ask unanimous consent that it now be in order for Senator GRAHAM to offer a perfecting second-degree amendment. I further ask unanimous consent that at 4:30 the Senate proceed to a vote in relation to the Graham second-degree amendment; further, that following that vote Senator BINGAMAN be recognized and it be in order for him to offer a motion to strike; further, that the Senate proceed immediately to a vote on the motion to strike.

Finally, I ask unanimous consent that if the motion to strike is agreed to, it be in order for Senator GRAHAM to offer a further amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object.

Mr. BINGAMAN. Mr. President, I would like to ask a question for clarification. I anticipated offering a second-degree amendment, for which I understood I would be entitled to 30 minutes equally divided. I want to make sure I have a right to argue that amendment and have my 30 minutes of debate on my second-degree amendment before we wind up agreeing to a 4:30 vote.

Mr. WARNER. Mr. President, would the Senator be willing to amend this by saying that the time remaining between now and 4:30 be equally divided between himself and Senator GRAHAM? Would that serve your purpose?

Mr. BINGAMAN. That will be an acceptable result.

Mr. LEVIN. Mr. President, reserving the right to object, we have not seen the perfecting amendment of the Senator from South Carolina. I have not seen the perfecting language. Reserving the right to object, what is the purpose of that, if I may inquire?

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. I have no objection.

Mr. WARNER. There are no objections that I know of, Mr. President.

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

There will be 20 minutes divided on each side. Who yields time? The Senator from South Carolina is recognized.

Mr. GRAHAM. I defer to my colleague from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me speak very briefly. I wanted to clarify a couple of points. The Senator from South Carolina has indicated that instead of people having a right to challenge the legality of their detention through a writ of habeas corpus, we are going to give them the right to challenge the legality of their detention in the Court of Appeals for the District of Columbia. That is not what his amendment says. His amendment says the Court of Appeals for the District of Colombia shall have a limited scope of review. The jurisdiction of the U.S. Court of Appeals for the District of Columbia on any claims with respect to an alien under this paragraph shall be limited to consideration of whether the determination of the combatant status review tribunal regarding such alien was consistent with such procedures and standards as specified by the Secretary of Defense.

The very limited scope of review that he would provide to the court of appeals would just say you can look to see whether they, in fact, followed their own procedures—the procedures set out by the Secretary of Defense—not whether the status, or whether the detention of that individual is legal. That is the question that the writ of habeas corpus gets to—a question of whether, in fact, a person is being legally held by the government.

To say that we are going to give the Court of Appeals for the District of Columbia authority to look at whether the Department of Defense followed their own procedures does not, in fact, solve that problem.

I think that is clearly a clarification that needs to be understood by everyone.

The other point that I would make is it does not matter, frankly, what people put in these petitions. I heard my colleagues—both the Senator from South Carolina and then the Senator from Arizona—say we have these outrageous requests being made that they didn't like the peanut butter, they don't like the television they are having to watch. It doesn't make any difference what they put in these petitions. The writ of habeas corpus which

the Senator from South Carolina would have us eliminate as to these individuals is a procedure which says the court can determine whether you are legally being held, not whether you are given the right peanut butter, not whether you are being allowed to see the right DVDs, and there is no obligation of the court to grant any of these petitions. There is no obligation of the court to hold hearings on any of these petitions.

All we are saying is if a court receives a petition from an individual who is being held prisoner and determines that there is a problem or a potential problem, that court does have authority to go ahead and issue an order which is a writ saying bring that individual here and justify the imprisonment of this individual.

This is the bedrock of our constitutional system. This is the bedrock of our legal system which goes back long before the Founders even wrote the Constitution. It would be a very tragic mistake for us, on a Thursday afternoon, in an amendment to the Defense authorization bill, to dispense with this for this or any group of individuals.

I urge my colleagues to resist the amendment, as I did before. If the amendment is defeated, the second-degree amendment which I would offer contains the first three sections of the amendment that the Senator from South Carolina has offered. That is the portion of the amendment which we agreed to for the Defense appropriations bill and that is the part which is appropriate for us to enact again as part of this bill, if the Senate desires to do so.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I wanted to ask the Senator from South Carolina if he would object to a unanimous consent that we allow Senator ROCKEFELLER and Senator ROBERTS to take 5 minutes to introduce a modification, and then to stack the votes and have the vote on that amendment prior to his on the unanimous consent order.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Mr. President, reserving the right to object, it is essential that the amount of time between now and 4:30 be used on the debate on the Graham amendment. That would detract, I am afraid, from that amount of time.

Mr. KERRY. It would be difficult. I think it would take 5 minutes to handle what we have to do.

Mr. LEVIN. I would ask unanimous consent—and I ask everyone to pay attention to this—that any time taken to comply with that request be added on at 4:30 so that the vote would be at 4:35 or 4:40, depending upon whether this insert would take 5 or 10 minutes to that modification.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Is the Presiding Officer's question, Is there objection?

The PRESIDING OFFICER. To the unanimous consent for 5 minutes, or such time as may be consumed.

Mr. KERRY. The order would be that Senator ROCKEFELLER and Senator ROBERTS would introduce the modification on his amendment, at which point the debate would conclude with respect to the Kerry amendment. We would vote on the Kerry amendment prior to the Graham amendment, and then subsequently his unanimous consent request, as propounded, already would stand.

Mr. WARNER. Mr. President, I have to at this time object.

I suggest the absence of a quorum so we can hopefully resolve this.

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.

Mr. WARNER. Mr. President, I appreciate the patience of all of our colleagues, wherever they may be. We are continuing to make considerable progress. That progress will hopefully lead to final passage tonight.

Consistent with those objectives, I ask unanimous consent that the Roberts amendment now be modified with the changes that are at the desk; provided further that the amendment be agreed to. I further ask consent that no later than the hour of 4:45, the Senate proceed to votes in relation to the following amendments: the Kerry amendment, as amended; Lautenberg No. 2478, as modified with the changes at the desk; Graham amendment 2516; the Bingaman motion to strike is under the previous order; conference report to accompany the foreign operations bill; further, that no second degrees be in order to the Kerry or Lautenberg amendments prior to the vote; and that there be 2 minutes equally divided before the votes, with the Lautenberg amendment getting 8 minutes equally divided before the vote. I further ask that after the first vote, all subsequent votes be 10 minutes.

Mr. LEVIN. Reserving the right to object—I don't intend to object—I ask a parliamentary inquiry as to whether there is anything in this unanimous consent agreement which would preclude the offering of additional second-degree amendments to the Graham amendment should the Graham amendment 2516 be agreed to and should the Bingaman motion to strike be defeated.

The PRESIDING OFFICER. Depending on how the amendment is drafted, a further second-degree amendment could be in order.

Mr. LEVIN. Or amendments.

The PRESIDING OFFICER. Or amendments.

Mr. LEVIN. I thank the Presiding Officer.

Mr. WARNER. I hear no further comment or objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 2514), as modified, was agreed to as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. REPORT ON ALLEGED CLANDESTINE DETENTION FACILITIES FOR INDIVIDUALS CAPTURED IN THE GLOBAL WAR ON TERRORISM.

(a) IN GENERAL.—The President shall ensure that the United States Government continues to comply with the authorization, reporting, and notification requirements of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(b) DIRECTOR OF NATIONAL INTELLIGENCE REPORT.—

(1) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall provide to the members of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives a detailed report setting forth the nature and cost of, and otherwise providing a full accounting on, any clandestine prison or detention facility currently or formerly operated by the United States Government, regardless of location, where detainees in the global war on terrorism are or were being held.

(2) ELEMENTS.—The report required by paragraph (1) shall set forth, for each prison or facility, if any, covered by such report, the following:

(A) The location and size of such prison or facility.

(B) If such prison or facility is no longer being operated by the United States Government, the disposition of such prison or facility.

(C) The number of detainees currently held or formerly held, as the case may be, at such prison or facility.

(D) Any plans for the ultimate disposition of any detainees currently held at such prison or facility.

(E) A description of the interrogation procedures used or formerly used on detainees at such prison or facility, and a determination, in coordination with other appropriate officials, on whether such procedures are or were in compliance with United States obligations under the Geneva Conventions and the Convention Against Torture.

(3) FORM OF REPORT.—The report required by paragraph (1) shall be submitted in classified form.

The amendment (No. 2478), as modified, is as follows:

On page 286, strike lines 1 through 3, and insert the following:

SEC. 1072. IMPROVEMENTS OF INTERNAL SECURITY ACT OF 1950.

(a) PROHIBITION ON HOLDING OF SECURITY CLEARANCE AFTER CERTAIN VIOLATIONS ON HANDLING OF CLASSIFIED INFORMATION.—

(1) PROHIBITION.—Section 4 of the Internal Security Act of 1950 (50 U.S.C. 783) is amended by adding at the end the following new subsection:

''(B) No person, including individuals in the executive branch and Members of Congress and their staffs, who knowingly violates a law or regulation regarding the handling of classified information in a manner that could have a significant adverse impact on the national security of the United States, including the knowing disclosure of the identity of a covert agent of the Central Intelligence Agency or the existence of classified programs or operations, the disclosure

of which could have such an impact, to a person not authorized to receive such information, shall be permitted to hold a security clearance for, or obtain access to, classified information.''.

(2) APPLICABILITY.—Subsection (f) of section 4 of the Internal Security Act of 1950, as added by paragraph (1), shall apply to any individual holding a security clearance on or after the date of the enactment of this Act with respect to any knowing violation of law or regulation described in such subsection, regardless of whether such violation occurs before, on, or after that date.

(b) CLARIFICATION OF AUTHORITY TO ISSUE SECURITY REGULATIONS AND ORDERS.—

Mr. BINGAMAN. Mr. President, could I clarify, how long is this discussion going to take because I know this is set for 4:45.

Mr. ROBERTS. Five minutes.

Mr. WARNER. Mr. President, I see that the Senator from Kansas says 5 minutes, and the Senator from Massachusetts is indicating some time to help our colleague.

Mr. BINGAMAN. Mr. President, the concern is, we still need a few minutes to complete the debate on the Graham amendment and my second degree. I would hate to see that time all used up while they are discussing this other amendment.

The PRESIDING OFFICER. Consistent with the previous agreement, Senators Bingaman and Graham would each have 15 minutes, and they may yield that time to others.

The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, it is my understanding, from the colloquy we had around the desk of the chairman of the Armed Services Committee, in order to expedite the whole process, we would lead with the Kerry amendment, and we would then proceed onward. I thought that was the agreement.

Mr. WARNER. Mr. President, I can only say to my colleague, having been a part of this, we seemed to reach a consensus. Staffs on both sides compiled this UC request, which my understanding is it was cleared, subject to clarification by the Senator from Michigan, and it was a concluded matter.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I do not think we need to get hung up on this at all. I think the unanimous consent request was absolutely correct in the order it proceeded. We simply now have to agree that Senators ROCKEFELLER and ROBERTS would have a total of 5 minutes between them, and subsequently Senator GRAHAM and Senator BINGAMAN would follow with their 15 minutes, approximately, and the votes would follow immediately thereafter.

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

Mr. WARNER. Mr. President, do I understand now that the Presiding Officer has ruled that the UC is in place that I so stated?

The PRESIDING OFFICER. It is.

Mr. WARNER. I thank the Chair.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the Presiding Officer.

AMENDMENT NO. 2507

Mr. President, I support the objective of the underlying amendment proposed by Senator KERRY and others, those others being the minority leader and Senator BIDEN.

The information required by the Kerry amendment is essential if we are to ensure that the U.S. intelligence community is carrying out its intelligence collection mission against a dangerous and nefarious terrorist enemy.

In fact, earlier this year, I took to the Senate floor during the consideration of the emergency supplemental appropriations bill and offered a sense-of-the-Senate amendment calling for such an investigation in the Intelligence Committee. The amendment was ruled out of order by the Chair.

The reason I raise this point is that the Intelligence Committee is the only committee in the Senate with the expertise and the jurisdictional responsibility for overseeing the Central Intelligence Agency and the other agencies comprising the U.S. intelligence community. The Kerry amendment, as amended, correctly points out that all members of the Intelligence Committee must have answers to key questions concerning alleged clandestine detention facilities. We need the information so we can ensure that the intelligence activities of this Nation are both effective and lawful. The Senate Intelligence Committee was established 30 years ago to carry out precisely this type of matter.

I wish to commend, once again, the Senator from Massachusetts, Mr. KERRY, and the cosponsors for offering this amendment. I am pleased that the second-degree amendment has been agreed to.

I thank my colleagues. I hope we can adopt this amendment on the floor because I believe it is a good piece of legislation that John Kerry has put forward.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I will just take 1 minute.

I thank Senator ROCKEFELLER and Senator ROBERTS for their cooperation in this effort and Senator WARNER and Senator LEVIN for helping to proceed down the road here. We are happy to accept the modification, a modification that I think appropriately keeps the jurisdiction within the Intelligence Committee, but at the same time it also appropriately makes certain that the Senate will have the information necessary to be able to provide accountability with respect to these activities.

So I thank my colleagues and look forward to the vote. I hope my colleagues will overwhelmingly embrace this amendment.

I thank Senator BINGAMAN and Senator GRAHAM for their courtesy.

Mr. President, I yield back any time we have.

AMENDMENT NO. 2515

The PRESIDING OFFICER. The Senator from New Mexico and the Senator from South Carolina each have 12½ minutes under their control.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I yield 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Senator from New Mexico.

I do not see the Senator from South Carolina on the floor, and I wanted to propound a question to him. So I will wait until he returns.

Mr. President, I wonder if the Senator from South Carolina might make himself available to answer an inquiry by the Senator from Michigan.

Mr. GRAHAM. I say to the Senator, I would be glad to, if I could just wrap up my thoughts. But do you want to do that now? What would you like to do?

Mr. LEVIN. Mr. President, I wonder if the Senator from New Mexico, then, would like to proceed with his time and then yield to me in a few minutes? And then I could propound that question at a later moment.

Mr. GRAHAM. Shall I go first?

Mr. BINGAMAN. Go right ahead.

The PRESIDING OFFICER. The Senator from South Carolina.

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

The PRESIDING OFFICER. Twelve and a half minutes.

Mr. GRAHAM. Twelve and a half minutes.

Mr. President, one thing I have not done in this whole process is be willy-nilly about this amendment or about this issue. I am deeply concerned as a Senator that we have lost the moral high ground in the war, that we have confused our own troops, that our interrogation techniques have been out of bounds. That is why I support Senator MCCAIN and other Members of this body—90 to 9—to get it right, because we have to maintain the moral high ground.

We did not have hearings about that because we do not need hearings. We know that our interrogation techniques have been confusing and sometimes unacceptable. We know it is time for America to say to the world that no matter what agency is involved or where the person is, they are going to be treated humanely. We know that.

I have been dealing with this for a year. I have worked with Senator SPECTER. I have been trying to find some way to get a grip on the legal aspects of this war, as well as the moral aspects of this war. And before I got here—I am still an active member of the Reserves. I have been a judge advocate in the Air Force most of my adult life.

Senator LEAHY mentioned something: Let's be a nation of the rule of

law. I applaud that. The question is, What is the law here? What is the rule of law when you are at war? The rule of law when you are at war is the law of armed conflict. When we were attacked on 9/11, we went to war, ladies and gentlemen. We are not fighting a criminal enterprise. The rule of law in the law of armed conflict says that POWs and enemy combatants and irregular combatants will be detained within the guidelines of the Geneva Conventions. An enemy combatant is not entitled to Geneva Conventions protection because they do not wear a uniform, they do not fight for a nation. But an enemy combatant is entitled to certain things. We as Americans say you are entitled to be treated humanely, interrogated humanely, and you are entitled to due process to be kept off the battlefield. But you are what you are. You are someone who took up arms against our country. Never in the history of the rule of law of armed conflict has an enemy combatant, POW, person who is trying to kill U.S. troops, been given the right to sue those same troops for their medical care, for their exercise programs, or for their reading materials.

Do you want to be the Senator who has changed 200 years of law? Do you want to be the Senator who is changing the law of armed conflict to say that an enemy combatant—someone caught on the battlefield, engaged in hostilities against this country—is not a person in a war but a criminal and given the same rights as every other American citizen? Do you want to be the Senator who changes 200 years of that? I do not want to be. This is not complicated. One thing is for sure, this is not complicated. No POW in the history of this country has ever been allowed to sue our own troops in Federal court. Does it matter? The habeas corpus writ that is being exercised does not come from the Constitution. This is not a constitutional right that an enemy combatant has under our law. This is an interpretation of a statute we passed, 2241.

The question is, 4 years after 9/11, do we want to change our law and give a terrorist, an al-Qaida member, the ability to sue our own troops in Federal court, all over the country, for anything and everything? I do not. I want to treat them humanely. I want to get good information. And I want to prosecute them within the rule of law. But I do not want to do something that is absurd and is going to hurt our national security; that is, allowing a terrorist the ability to go to Federal court and sue our own troops, who are fighting for our freedom, as if they were an American citizen.

Do you know why the Nazis did not get to do that when we had them in our charge? Because that is not the law. It has never been the law. We caught six German saboteurs sneaking into this country, trying to blow up part of America. They were tried. Where? In a military commission, a military tribunal, not in a civilian court. We had German POWs who tried to come into Federal court, and our court said: As a member of an armed force, organized against the United States, you are not entitled to a constitutional right of habeas corpus.

Do you want to give these terrorists habeas corpus rights just like an average, everyday American citizen or a common criminal to sue our own troops? Well, if you do, vote against my amendment. If you want to get back to where we have been for 200 years, then you need to support me.

This is not complicated. We need to do more than one thing at a time. We need to have interrogation techniques we can be proud of. We need the McCain amendment. We need to standardize interrogation techniques so we do not lose the moral high ground. We need to make a statement that we are going to treat everybody humanely. Enemy combatant, POW—no matter who you are—we are going to treat you humanely.

The Congress does not need to give the executive branch a blank check on how to run this war. My amendment requires the executive branch to report to us about what they are doing at Guantanamo Bay. It requires the Senate to confirm the person in charge of releasing or retaining these enemy combats. My amendment gives them every right the Geneva Conventions afford an enemy combatant, and then some. It gives them an adversarial proceeding at Guantanamo Bay, where they can challenge their status. We go further. It gives them a right to go to the District Court of Appeals of the District of Columbia—something never done in the history of warfare—because we want to let the world know we are going to go out of our way to get it right.

But, ladies and gentlemen, if we do not rein in prisoner abuse, we are going to lose the war. But if we do not rein in legal abuse by prisoners, we are going to undermine our ability to protect ourselves.

I am making one simple request of this body: Do not give the terrorists, the enemy combatants, the people who blow up folks at weddings, who fly airplanes into the Twin Towers, the ability to sue our own troops all over the country for any and everything. Give them due process. Treat them humanely. Try them under the rule of law. But let's not change 200 years of the law of armed conflict.

Your vote today matters. Your vote today matters. We are going to make history one way or the other.

Does the Senate, honestly to God, want to give terror suspects the same rights as American citizens based on a statute we pass? That is what is at stake here. Our troops are counting on us.

They are being taken all over the country, and here is what is going on according to some of the people involved in these habeas petitions:

> We have over one hundred lawyers now from big and small firms working to represent these detainees. Every time an attorney goes down there, it makes it that much harder for the U.S. military to do what they're doing. You can't run an interrogation . . . with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

Civilian judges cannot run this war. This is about the rule of law. The rule of law protects people in armed combat. This is about changing our law to give terror suspects rights of U.S. citizens.

Shame on us if we do that.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BINGAMAN. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from New Mexico has 11½ minutes.

Mr. BINGAMAN. And how much on the side of the proponent?

The PRESIDING OFFICER. Four minutes.

Mr. BINGAMAN. I yield 5 minutes to the Senator from Michigan.

Mr. LEVIN. I thank my friend from New Mexico. I wonder if I could inquire of the Senator from South Carolina, I agree with much of what he said, and I congratulate him for trying to get some rules and regulations into these proceedings. I believe that is important. But if the habeas corpus proceedings were added to the Senator's amendment—they were not part of the Senator's amendment to begin with, and I think all of us shared the original amendment of the Senator from South Carolina, but then the court-stripping provisions were added relative to habeas corpus. That is where we are getting into very precipitous trouble.

Given the language of the new amendment of the Senator from South Carolina, if one of these enemy combatants is sentenced to death, there would be no appeal; is that correct?

Mr. GRAHAM. No, sir. That is not correct.

Mr. LEVIN. Let me read the language of the Senator's amendment.

Mr. GRAHAM. The military commissions would be the sentencing body, not the CSRTs. I know this is a bit complicated, but the CSRT provision doesn't try people. It determines whether they are enemy combatants.

Mr. LEVIN. If I could read this, because I only have a few minutes, on page 3 of the amendment, Judicial Review:

United States Code is amended by saying no court, justice, or judge shall have jurisdiction to hear or consider an application for writ of habeas corpus filed by or on behalf of an alien outside the United States who is detained at Guantanamo Bay.

Is it not accurate to say that no court of the United States could review a conviction which even resulted in a death sentence for one of these people down at Guantanamo and that that is inconsistent with the decision of the Supreme Court in re Quirin?

Mr. GRAHAM. No, sir. That is not accurate. This says that no illegal, no foreign alien who is being detained as an enemy combatant can file a writ of habeas corpus. The reason for that being said is because that has been the law for 200 years. We didn't let German prisoners file writs. Under the Roosevelt administration, these six people were captured. They were tried. Four were executed. A writ of habeas corpus was not available to them. It should not have been available to them. The reason we have a military system and we have a civilian system is because we understand the military is a unique body. We don't try our own people in civilian court. We try them in military court. It has been the history of the law of armed conflict that when you have somebody tried for a violation of law of armed conflict, you don't go to Federal court. You go to a military commission or a military court. That is what happened in World War II. That is what will happen to these people, if they are tried.

Mr. LEVIN. Let me read from the opinion in the Hamdan case to see if the Senator would agree with it. Ex parte Quirin, in which captured German saboteurs challenged the lawfulness of the military commission before which they were to be tried, provides a compelling historical precedent for the power of civilian courts to entertain challenges that seek to interrupt the processes of military commissions. The Supreme Court ruled against the petitioners in Quirin but only after considering their arguments on the merits.

What the language of the Senator's amendment does—and I hope it is inadvertent—the Senator eliminates court review of the sentences of enemy combatants before these commissions. I understand that he provides a mechanism to review the status of those enemy combatants. That is fine. He sends them all to court. That creates the kind of problem which the Senator from Pennsylvania talked about. But he goes way beyond that. The Senator's language goes way beyond saying that we are substituting court review for habeas corpus relative to status determinations. The Senator's amendment eliminates habeas corpus on all issues for enemy combatants at Guantanamo. That would be a clear repeal of the decision in Quirin and would also do one other thing.

In the Rasul case, which has been already decided by the Supreme Court, the Supreme Court concluded that Federal courts have jurisdiction to determine the legality of the executive's potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing. This decision of the Supreme Court would be reversed if we adopted this language.

Finally, in the moment I have remaining, there is pending a decision at the Supreme Court which would be retroactively prohibited. The Supreme Court has agreed to hear a case recently, about a week ago, in the case of Hamdan v. Rumsfeld to decide whether military commissions established by the President—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BINGAMAN. I yield whatever time the Senator needs.

Mr. LEVIN. In the Hamdan case, the Supreme Court, a few days ago, agreed to determine the legality of the military commissions established by the President to try enemy combatants and about whether detainees at Guantanamo are entitled to protections under the Geneva Conventions. That case would be wiped out under the language which is retroactive in the Senator's amendment. The Supreme Court, although they have agreed to hear the case, would be stymied in hearing a case they have agreed to hear. This goes way beyond the question of whether we are substituting. I have no great problem in substituting the court review for habeas corpus relative to those determinations of status. I think that is a fair substitute because at least then there is a court review. But this goes way beyond that, because this amendment eliminates habeas corpus for all issues which might be raised by detainees, including a conviction which leads to a death sentence that violates Quirin.

It is inconsistent with what the Supreme Court did in the case which I already referred to. It would eliminate the jurisdiction already accepted by the Supreme Court in Hamdan.

I urge that we not adopt this amendment. It is far too broad. Senator SPECTER's argument that the Judiciary Committee should have an opportunity to look at this is an argument to which we ought to listen.

Although I disagree with the Senator's modified amendment, I do want to commend Senator GRAHAM because he has at least undertaken to tackle a very difficult issue which this body should tackle.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. To my good friend Senator LEVIN, we fundamentally disagree. There is a principle at stake here that is as old as war itself. Writs of habeas corpus have never been given to enemy combatants or POWs. They have never been allowed access to the Federal court to challenge their enemy combatant status tribunal which is new and different, beyond the Geneva Conventions. The German prisoners were tried by a military commission. Four of them were executed. They were not allowed to go into Federal court under writ of habeas corpus because the Constitution does not confer the right of a writ to a foreign alien involved in combat activities against the United States. The only reason we are talking about this is, the Court is inviting us: As the Senate, do you want al-Qaida members, under 2241, to have the writ of habeas corpus. The military commissions are set up to try these people. My amendment talks about the procedure of keeping them off the battlefield, allows them due process rights beyond Geneva Conventions article 5, allows them now to go to a district court and the Court of Appeals for the District of Columbia beyond what the Geneva Conventions ever envisioned. The military commissions are totally different. No one has been tried yet.

Here is the one thing I can tell you for sure as a military lawyer. A POW or an enemy combatant facing law of armed conflict charges has not been given the right of habeas corpus for 200 years because our own people in our own military facing court-martials, who could be sentenced to death, do not have the right of habeas corpus. It is about military law. I am not changing anything. I am getting us back to what we have done for 200 years.

If you want to give terrorists habeas corpus rights as if they were American citizens, that they are not part of an outfit trying to wage war on us, fine, vote against me. If you think they are common criminals like American citizens, vote against me. I will be the first to say that if these were criminals, we wouldn't treat them this way. These are not criminals. These are people caught on the battlefield as the Nazis were caught on the battlefield. They need to be held accountable. They need to be treated humanely. Does this body want to be the first Senate in the history of the United States to confer rights on a POW and an enemy combatant to sue the troops who are trying to protect us? There are 160 cases down there. There are going to be 300 cases. They are going to ruin the ability to get intelligence because we in the Senate haven't acted, and we need to act.

How are we going to act? Are we going to act in the best tradition of the United States in accordance with the rule of law, or are we going to give terrorist suspects, al-Qaida members, the right to sue our own troops in Federal court? If you want that, vote against me. If you think that is absurd, vote with me.

Mr. LEVIN. Does the Senator from South Carolina want to give those same terrorists due process, for heaven's sake? Of course, he does. He gets up on the floor and says he wants to provide due process. I say—

Mr. GRAHAM. May I respond?

Mr. LEVIN. I want an opportunity here. He is on the right track in doing it. The question is whether there will be an appeal. If there is a conviction of those alleged terrorists for committing a war crime, is there any appeal under this language in the amendment? I am afraid there is not. I don't think it is the intention of the amendment, because the Senator says, of course, there is going to be appeal. The trouble is, the language of the amendment, by its own specific terms, says: No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by somebody at Guantanamo. That is the problem here. There would be no appeal.

Although the Senator makes a plea for due process for these same terrorists, he would eliminate the appeal of a conviction that led to a capital offense, the death penalty, for these same terrorists. I hope that is not his intent, but it would be the first time that that would ever happen, that we would purport, as the Senate, to strip the court of habeas corpus opportunity to review that kind of a conviction. Since ex parte Quirin, we have never done that.

Mr. GRAHAM. May I answer that? I say to the Senator, with all due respect, that is dead wrong. Military commissions that will be trying the people designated by the President, subject to be tried at Guantanamo Bay for violation of the law of armed conflict, do get appeals. They get more appeal rights than the people who were tried as German saboteurs under military commissions. They get a lawyer. They get the right to confront witnesses against them. They get the right to call witnesses. The military commissions are different than the CSRTs. There is a process in the military commissions for people to have every right under the Geneva Conventions and then some, to have more rights than the German saboteurs. The German saboteurs did not have habeas corpus rights. They had an appeal right within the military commission system, as the al-Qaida members do. To say that you can be tried at Guantanamo Bay for a war crime and not have an appeal is not true. It is like we did with the saboteurs. To say that people at Guantanamo Bay should have habeas corpus rights is doing something no one has ever had in the law of armed conflict, Nazi or otherwise.

Mr. LEVIN. My final question, to what court would the conviction of a detainee at Guantanamo for a capital offense subject to death, to what court would that appeal lie, if this language of the Senator is adopted? It is a very specific question, to what court?

Mr. GRAHAM. Under the military commission model, there is an appeal to a three-judge panel of civilians appointed to hear appeals. In the military commission model, under World War II, they didn't get that. There is an appeal process for civilian review of the trial of enemy combatants detained at Guantanamo Bay. My amendment doesn't affect that. It doesn't change that at all. My amendment prevents the use of habeas rights for POWs and enemy combatants, something we have never given in the history of the law of armed conflict to people in the military system because we don't want civilian judges coming in here and running the war. I am trying to get us back where we have always been. This is not complicated, but it is very important.

The PRESIDING OFFICER. The time of the Senator from South Carolina has expired.

Mr. LEVIN. If we are getting back to where we have always been, we don't need this amendment. The Senator just answered my question by not answering it. I asked him what court would an appeal of a death sentence be appealed to? His answer was, a three-judge panel. That three-judge panel is appointed by the Secretary of Defense. I asked specifically to what court would a death sentence be appealed, if this language is adopted. I read the language as to how broad it is. It eliminates explicitly any appeal: No court, justice, or judge shall have jurisdiction to hear or consider an application for writ of habeas corpus, and that is the way an appeal goes to a court from one of these people. It is eliminated. We strip courts of the right to hear a habeas corpus petition on a death sentence.

I agree with what the Senator started out to do with his amendment. He was on the right track. But this language goes way beyond it. That is why the chairman of the Judiciary Committee, Senator SPECTER, and the ranking member of the Judiciary Committee, Senator LEAHY, oppose this amendment.

Mr. GRAHAM. Mr. President, I want to end with this thought. Never in the history of military commissions where we have tried enemy combatants and spies have they appealed those convictions to Federal court. Never.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. BINGAMAN. Mr. President, let me use the final minute of this debate to clarify for my colleagues what we are doing here. There are four parts to the amendment that the Senator from South Carolina has offered. There are parts A, B, C, and D. Parts A, B, and C are perfectly acceptable and provisions that I support and Senator LEVIN supports. They were worked out. They were added to the Defense appropriations bill.

The first deals with procedures for status review of detainees. The second sets out what those procedures would generally provide. The third is a report on modification of procedures that would be made to the Congress.

It is the last part, this section D, judicial review, that is such a terrible mistake, in my opinion. It has us, on a Thursday afternoon as part of a debate on a Defense authorization bill, making a very major change that is within the jurisdiction of the Judiciary Committee. The Judiciary Committee should be considering any effort by the Congress to limit or prohibit or suspend the writ of habeas corpus. We should not be trying to do that sort of ''oh, by the way, let's do this.''

The PRESIDING OFFICER. All time has expired.

Mr. BINGAMAN. I urge the defeat of the Graham amendment. Assuming it is defeated, I will not have to offer a second-degree amendment. If it is adopted, I will offer a second-degree amendment to retain the first three portions.

Mr. President, I yield the floor.

Mr. GRAHAM. I ask unanimous consent to add Senator CORNYN as a cosponsor to the amendment.

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

AMENDMENT NO. 2507, AS AMENDED

The PRESIDING OFFICER. Under the previous order, the question is on the Kerry amendment, as amended.

Mr. WARNER. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Wyoming (Mr. ENZI), the Senator from Nebraska (Mr. HAGEL), the Senator from Indiana (Mr. LUGAR), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Wyoming (Mr. THOMAS).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

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

The result was announced—yeas 82, nays 9, as follows:

[Rollcall Vote No. 318 Leg.]

YEAS—82

Akaka	Dodd	McConnell
Allard	Dole	Mikulski
Allen	Dorgan	Murkowski
Baucus	Durbin	Murray
Bayh	Ensign	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Obama
Bingaman	Frist	Pryor
Bond	Graham	Reed
Boxer	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Harkin	Rockefeller
Burns	Hatch	Salazar
Byrd	Hutchison	Sarbanes
Cantwell	Inhofe	Schumer
Carper	Jeffords	Shelby
Chafee	Johnson	Smith
Clinton	Kennedy	Snowe
Coburn	Kerry	Specter
Cochran	Kohl	Stabenow
Coleman	Landrieu	Sununu
Collins	Lautenberg	Talent
Conrad	Leahy	Thune
Cornyn	Levin	Voinovich
Craig	Lieberman	Warner
Crapo	Lincoln	Wyden
Dayton	Lott	
DeWine	McCain	

NAYS—9

Burr	Isakson	Sessions
Chambliss	Kyl	Stevens
DeMint	Martinez	Vitter

NOT VOTING—9

Alexander	Enzi	Lugar
Corzine	Hagel	Santorum
Domenici	Inouye	Thomas

The amendment (No. 2507), as amended, was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. There is now 8 minutes equally divided on the Lautenberg amendment.

Mr. WARNER. Mr. President, I see the distinguished Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 2478, AS MODIFIED

Mr. LAUTENBERG. Mr. President, this modified version of my amendment contains several good suggestions from the managers of this bill, Senator WARNER and Senator LEVIN. My underlying amendment stands for a very simple proposition: Those who knowingly compromise significant classified information should not continue to hold a security clearance and they should be denied further access to classified information. The modification to the amendment makes clear that it applies to Members of the Congress and to their staffs as well.

My amendment is similar to one offered by our Democratic leader, Senator REID, in July. Some of our colleagues reacted to Senator REID's amendment by expressing their concern that it was an open-ended standard. In deference to these concerns, I have added the ''knowing'' standard; in other words, if someone reveals information knowingly. I am pleased to see my colleagues find this version acceptable.

Senator WARNER and I served in World War II. We had an expression then. It said: ''Loose lips sink ships.'' Everybody was participating in protecting ourselves from revealing information to the enemy. Exposing our secrets was a grave offense then and it is a grave offense now.

No one is above this law and no one has a right to keep their security clearance if they knowingly reveal our secrets. Anybody in Government, whether the White House or the Congress or a Government employee, should have to live by the same standards as other hard-working Federal employees. The Los Angeles Times recently reported that an intelligence analyst lost his clearance because he faxed his resume using a commercial machine. A Defense Department employee had her clearance suspended because a jilted boyfriend called her office and said she was unreliable. An Army officer had his clearance revoked over $67 in personal calls charged to a military cell phone. There should not be a double standard for anybody.

I want to be clear with my colleagues. This amendment has nothing to do with criminal behavior. That is taken care of in other statutes. It merely governs under what circumstances someone should lose their security clearance for improper behavior. Given recent developments of which we are all aware, this is a necessary amendment. We need to make sure those who are careless with national security information are denied continued access to top-secret information. Anyone who leaks classified information should not continue to have a security clearance. I am sure across the country people would agree with that. If you are giving out information you should not reveal in the first place, why should you have access to that same type information on a continuing basis?

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I worked on the amendment with the distinguished Senator from New Jersey. I have done so in consultation with my leadership and the leadership of the Intelligence Committee.

I would like to make this offer to my good friend. We have a rapidly moving bill. We have a number of amendments yet to vote on tonight. The leadership may well be addressing the Senate, the majority leader and Democratic leader, about this bill.

Is it at all possible that we can voice vote this amendment? I urge my colleague to do so.

Mr. LAUTENBERG. I want to be cooperative, but I do want to make sure it is clearly understood that we are all supporting—or those who are supporting this amendment. I would like it clearly on the record. Perhaps a 10-minute vote?

Mr. WARNER. Suppose we had a voice vote and you determined from the resounding ayes if it meets your specifications?

Mr. LAUTENBERG. If I were sitting in that chair, I would probably say yes, but I am not sitting in that chair.

I ask that we have a rollcall vote.

Mr. STEVENS. I will be glad to have you occupy the Chair right now, as President pro tempore.

Mr. LAUTENBERG. If we continue to talk about it, we will have lost the opportunity to move the bill along. This was the understanding that we had, for a rollcall vote. Forgive me, my colleagues, but like everybody else I want to have a rollcall vote.

Mr. STEVENS. Will the Senator take a division vote? A standing vote? A division of the Senate, a standing vote? All those in favor stand?

Mr. LAUTENBERG. No.

Mr. WARNER. Mr. President, I say to my good friend, we have worked with you in a most cooperative way.

I would like to have the attention of my good friend. We have worked with you in a most cooperative way. What I am trying to do is convenience a number of Members who have commitments tonight. I once more ask if you will not accept this on a voice vote.

Mr. LAUTENBERG. I don't want to be obstinate. If we could now declare the time that this session will end, perhaps we can then look at a standing vote. Other than that, if I agree to move my amendment along and find out that we still continue to drag on—will all the other amendments be subjected to voice votes?

Mr. WARNER. I will ask all.

Mr. STEVENS. Where there is no objection, yes.

Mr. WARNER. If there is no objection.

So once again I ask my colleague if we could voice vote this amendment?

Mr. STEVENS. How about a unanimous consent request?

Mr. LAUTENBERG. I have the yeas and nays on this.

Mr. KENNEDY. What is the parliamentary situation? Will the Senator yield? Will the Senator yield for a brief question?

Mr. WARNER. Yes.

Mr. KENNEDY. As I understand the rules, if you get a standing division and the Chair calls it and you are the author of the amendment and you are not satisfied, you can still ask for the yeas and nays, am I not correct?

Mr. WARNER. I think the Senator is correct in his interpretation of the rules.

Mr. KENNEDY. So you can say you want a voice vote and if you are not satisfied, you can ask for the yeas and nays. Can you get a standing division if you are not satisfied? You can still get the yeas and nays, am I not correct?

Mr. WARNER. The Senator is correct. Can we have a standing division?

Mr. LAUTENBERG. If that is the situation, I am going to cooperate.

Mr. WARNER. Will the Presiding Officer arrange for a division vote?

May we have order in the Chamber.

The PRESIDING OFFICER. A division is requested.

All those in favor of the amendment, stand and remain standing until counted. The ayes will be seated and the nays will rise.

On a division, the amendment (No. 2478), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2516

The PRESIDING OFFICER. The next amendment to be considered is the Graham amendment.

Mr. GRAHAM. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for himself, Mr. KYL, and Mr. CHAMBLISS proposes an amendment numbered 2516.

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

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

The amendment is as follows:

(Purpose: Relating to the review of the status of detainees of the United States Government)

Strike all after the word SEC.

___. REVIEW OF STATUS OF DETAINEES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees, and to the Committees on the Judiciary of the Senate and the House of Representatives, a report setting forth the procedures of the Combatant Status Review Tribunals and the noticed Administrative Review Boards in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay.

(b) PROCEDURES.—The procedures submitted to Congress pursuant to subsection (a) shall, with respect to proceedings beginning after the date of the submittal of such procedures under that subsection, ensure that—

(1) in making a determination of status of any detainee under such procedures, a Combatant Status Review Tribunal or Administrative Review Board may not consider statements derived from persons that, as determined by such Tribunal or Board, by the preponderance of the evidence, were obtained with undue coercion; and

(2) the Designated Civilian Official shall be an officer of the United States Government whose appointment to office was made by the President, by and with the advice and consent of the Senate.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees of Congress referred to in subsection (a) a report on any modification of the procedures submitted under subsection (a) not later than 30 days before the date on which such modifications go into effect.

(d) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

''(e) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien outside the United States (as that term is defined in section 101(a)(38) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(38)) who is detained by the Department of Defense at Guantanamo Bay, Cuba.''.

(2) CERTAIN DECISIONS.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any decision of a Designated Civilian Official described in subsection (b)(2) that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the procedures and standards specified by the Secretary of Defense for Combatant Status Review Tribunals.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to any application or other action that is pending on or after the date of the enactment of this Act. Paragraph (2) shall apply with respect to any claim regarding a decision covered by that paragraph that is pending on or after such date.

This section shall become effective 1 day after enactment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Debate is equally divided on the amendment. Is there further debate?

Mr. BINGAMAN. Mr. President, let me speak briefly in opposition to this amendment.

This amendment contains a provision that I think is a very major mistake. It essentially denies all courts anywhere the right to consider any petition from any prisoner being held at Guantanamo Bay. In my view, it is contrary to the way the court decisions have come down already. It is an extraordinary step for this Congress to be taking as an amendment to the Defense bill. This is an issue that should be dealt with in the Judiciary Committee. Senator SPECTER has spoken against the amendment. Senator LEVIN has spoken against the amendment. Senator LEAHY has spoken against the amendment. It is something that requires hearings. It is a very important issue, and we should not be dealing with it here on a late evening on Thursday as part of this authorization bill.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from South Carolina.

Mr. GRAHAM. Mr. President, we need to standardize our interrogation techniques because we have lost our way. We need to make a statement we are not going to treat people poorly during our charge. For 200 years in the law of armed conflict, no nation has given an enemy combatant, a terrorist, al-Qaida member the ability to go into every Federal court in the United States and sue the people who are fighting the war for us. There are 160 habeas corpus petitions being filed against Guantanamo Bay detention.

Let me read what one of them is saying, a motion by a high-level al-Qaida detainee complaining about basic security procedures: Speed of mail delivery, medical treatment, seek an order to be transferred to the least onerous condition at Gitmo, and asking the court to order Gitmo to allow him to keep any books and reading material sent to him, and report to the court on his opportunities for exercise, communication, recreation, and worship.

The Nazis couldn't go to a Federal court when we had them in our charge as prisoners of war. Never in the history of armed conflict has this been allowed.

Let us stand up for our troops in a reasonable way, protect them from abuses, and protect them from the court suits filed by the people they are fighting.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Wyoming (Mr. ENZI), the Senator from Nebraska (Mr. HAGEL), the Senator from Indiana (Mr. LUGAR), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Wyoming (Mr. THOMAS).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

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

The result was announced—yeas 49, nays 42, as follows:

[Rollcall Vote No. 319 Leg.]

YEAS—49

Allard	DeMint	McCain
Allen	DeWine	McConnell
Bennett	Dole	Murkowski
Bond	Ensign	Nelson (NE)
Brownback	Frist	Roberts
Bunning	Graham	Sessions
Burns	Grassley	Shelby
Burr	Gregg	Snowe
Chambliss	Hatch	Stevens
Coburn	Hutchison	Talent
Cochran	Inhofe	Thune
Coleman	Isakson	Vitter
Collins	Kyl	Voinovich
Conrad	Landrieu	Warner
Cornyn	Lieberman	Wyden
Craig	Lott	
Crapo	Martinez	

NAYS—42

Akaka	Dodd	Leahy
Baucus	Dorgan	Levin
Bayh	Durbin	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Harkin	Nelson (FL)
Byrd	Jeffords	Obama
Cantwell	Johnson	Pryor
Carper	Kennedy	Reed
Chafee	Kerry	Reid
Clinton	Kohl	Rockefeller
Dayton	Lautenberg	Salazar

Sarbanes	Smith	Stabenow
Schumer	Specter	Sununu

NOT VOTING—9

Alexander	Enzi	Lugar
Corzine	Hagel	Santorum
Domenici	Inouye	Thomas

The amendment (No. 2516) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BINGAMAN. Mr. President, I do not intend to call for a vote on my amendment at this time. We can proceed to the next item on the unanimous consent request.

Mr. WARNER. For clarification, does the Senator formally withdraw his amendment?

Mr. BINGAMAN. That is correct. I will not offer the amendment at this time so we can proceed to the remainder of the votes that are scheduled.

Mr. KENNEDY. Parliamentary inquiry: The Senator is not withdrawing his amendment permanently. Are you withdrawing your amendment permanently?

Mr. BINGAMAN. Mr. President, as I understand the unanimous consent agreement we have entered into, it is still possible to file second-degree amendments and to propose second-degree amendments to the Graham amendment even after we take the series of votes that are scheduled tonight. And it is not my intent to go to a vote on my amendment at this time so we can proceed to the remainder of the votes.

Mr. KENNEDY. I thank the Senator.

Mr. WARNER. Regular order. Has the Chair ruled on his request to withdraw the amendment?

The PRESIDING OFFICER. The amendment was never offered.

Mr. WARNER. I thank the Chair for the clarification.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2006—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. We now move to the conference report to accompany the foreign operations bill, H.R. 3057.

Is there further debate? If not, the question is on agreeing to the conference report.

Mr. WARNER. I understand the leadership requests the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Parliamentary inquiry: What is the order for debate entered into on this conference report?

The PRESIDING OFFICER. Two minutes of debate equally divided.

Mr. LEAHY. Mr. President, I see the senior Senator from Kentucky. I praise him and his staff.

Mr. MCCONNELL. I yield back our time.

The PRESIDING OFFICER (Mr. CHAFEE). All time having been yielded back, the question is on agreeing to the conference report. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Wyoming (Mr. ENZI), the Senator from Nebraska (Mr. HAGEL), the Senator from Indiana (Mr. LUGAR), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Wyoming (Mr. THOMAS).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

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

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 320 Leg.]

YEAS—91

Akaka	Dodd	McConnell
Allard	Dole	Mikulski
Allen	Dorgan	Murkowski
Baucus	Durbin	Murray
Bayh	Ensign	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Obama
Bingaman	Frist	Pryor
Bond	Graham	Reed
Boxer	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Harkin	Rockefeller
Burns	Hatch	Salazar
Burr	Hutchison	Sarbanes
Byrd	Inhofe	Schumer
Cantwell	Isakson	Sessions
Carper	Jeffords	Shelby
Chafee	Johnson	Smith
Chambliss	Kennedy	Snowe
Clinton	Kerry	Specter
Coburn	Kohl	Stabenow
Cochran	Kyl	Stevens
Coleman	Landrieu	Sununu
Collins	Lautenberg	Talent
Conrad	Leahy	Thune
Cornyn	Levin	Vitter
Craig	Lieberman	Voinovich
Crapo	Lincoln	Warner
Dayton	Lott	Wyden
DeMint	Martinez	
DeWine	McCain	

NOT VOTING—9

Alexander	Enzi	Lugar
Corzine	Hagel	Santorum
Domenici	Inouye	Thomas

The conference report was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. 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. FRIST. Mr. President, I ask unanimous consent that the only remaining first-degree amendments to the Defense bill, other than any further managers' amendments that are cleared, be an amendment offered by the majority leader or his designee on Iraq, and an amendment offered by the Democratic leader or his designee on Iraq, and that they be laid down this evening with no second degrees in order. I further ask unanimous consent that there be 3 second degrees in order to the Graham amendment, two offered by Senator LEVIN or his designee, and one offered by Senator GRAHAM. I further ask consent that all amendments be offered and debated on Monday, under the previous limitations, and that on Tuesday, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to a vote in relation to the majority amendment on Iraq, to be followed by a vote in relation to the Democratic amendment, to be followed by votes in relation to the second degree amendments in order offered, to be followed by a vote on the underlying Graham amendment, as amended; and that following these votes the bill be read a third time and the Senate proceed to a vote on passage of the bill, with no intervening action or debate; finally, that there be 30 minutes equally divided between the two managers prior to the start of the votes.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object, and I surely will not, is it my understanding that we had agreed that there would be some brief time period on Tuesday, prior to the votes on the Iraq amendments, I believe it was like 20 minutes?

Mr. FRIST. Mr. President, just for the information of our colleagues, there will be 30 minutes equally divided between the two managers prior to the start of the votes.

Mr. LEVIN. With that clarification, I am very content.

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

The Senator from Virginia.

Mr. WARNER. I thank the distinguished majority leader and the Democratic leader and all others who made possible that we will now have a Defense authorization bill, a strong bill, a good bill. The UC just propounded by the distinguished majority leader requires that the Iraq amendments be laid down tonight.

AMENDMENT NO. 2518

On behalf of the distinguished majority leader and myself, I now send to the desk the Iraq amendment as required by the UC. My understanding is the amendment by the distinguished Senator from Michigan on Iraq is at the desk; is that correct?

Mr. LEVIN. I was going to send that up immediately after the Senator sends up his amendment.