DOMENICI, Mr. HARKIN, Mr. INOUYE, Mr. REID, Mr. KOHL, Mrs. MURRAY, Ms. LANDRIEU, Mr. DURBIN, and Mr. BYRD conferees on the part of the Senate.

The Senator from Idaho.

MORNING BUSINESS

Mr. CRAIG. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

Mr. CRAIG. Mr. President, I ask unanimous consent that I be able to proceed for 10 minutes, to be followed by the Senator from Massachusetts, Mr. KERRY, for 10 minutes.

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

ENERGY CONSERVATION

Mr. CRAIG. Mr. President, for the last several weeks, those of us who serve on the Subcommittee on Health and Human Services have been trying to find adequate resources amongst other resources to fund LIHEAP, the money necessary to help low-income families provide for their comfort this winter. I thought it would be an appropriate time to talk about that for a little bit because I think Americans need to understand they are not without power to do a few simple things over the course of the next several months of this winter to help themselves as it relates to the heating of their own homes.

Americans spend more than $160 billion—that is right, $160 billion—a year on heat, cooling, lights, and living in their homes. That is an awful lot of money. If most Americans are like I am, I would like to know how I can bring that number down a little bit, how I might be able to tighten my belt a little or my family's budget a little bit during this time of extremely high-priced energy.

We hear about record natural gas prices and 30- and 40- and 50-percent increases in heating bills this winter for those who heat with natural gas. We know those who heat with home heating oil in the Northeast are going to pay substantially more. In the West and in the pipelines of the West on which my home is connected, where there is more gas, we are still going to be paying 25 or 30 percent more.

What might we do about it? Let me suggest a couple of things.

Do you know that if you lower your home heating thermostat by 2 degrees—by 2 degrees—for every degree you lower it, you save 1 percent on your heating bill. We were told by experts recently who were testifying before the Energy and Natural Resources Committee, if every American did that this winter, by spring, we could potentially have a surplus in natural gas in the lower 48, and that in itself would drive prices down. Americans have power to help themselves if they simply would turn their thermostats down by 2 degrees.

I am not going to do a ''Jimmy Carter'' on you by saying put on a sweater, but if you did turn your home heating thermostat down by 2 degrees and if you did put on a sweater and if you are a couple living by yourself in a large home and you turn off the radiators in some of your bedrooms that you are not using and close the doors, there could literally be a dramatic savings across this country.

If you want to change your gas price experience at the pump, instead of driving 70 and 75 or 80 miles per hour on the freeway, why don't you go back to 60 or 65? And if you turned it down and slowed it down, oil consumption could drop in a day—a day—in this country by 1 million barrels of consumption. That is the power of the American consumer if the American consumer wants to do something about it instead of pointing fingers and blaming—and there is plenty of that going around, and we deserve to take some of it. The consumer is not without power.

Let me suggest this in my time remaining. Senator BINGAMAN and I would like to help in that effort. So we are going to provide conservation packages, packets of information to our colleagues' offices that they can send out in their letters to their constituents advising and assisting in this kind of conservation effort. We hope you do it. If every Senator and all Senate staffs turn off their computers when they go home at night—shut them down, hit the off switch, turn out the lights in your office. If that were done across America today, heating bills and energy bills would drop precipitously.

But we are in this mode of everything on, all the lights on, the thermostat turned up because we are still living in the memory of surplus and inexpensive energy. That memory is gone. The reality is that the world has changed significantly, and while we scramble to catch up and provide increased availability of supply in the market—and that is what we are doing and that is what the national energy policy passed in August is attempting to do—while that is happening, you know what we can do: We can help ourselves.

So once again I say to America, turn your thermostat down a few degrees, put on a sweater, shut portions of your house down and take literally tens, if not hundreds, of dollars off your heating bill in the course of a winter. If we do it collectively across America, by spring, natural gas prices could be down dramatically, and we would not see the kind of job loss that is occurring today in the chemical industry as large manufacturing plants are shut down simply because they cannot afford the price of natural gas, and they are moving elsewhere in the world to produce their product.

We are building pipelines, we are drilling for more natural gas out West and in the overthrust belts than we ever have before, and there are trillions of cubic feet available out there if we can get to it. We are making every effort to, and this administration is doing just that. In the interim, in the reality of a cold winter, America, you can help yourself. America, you can drive a little slower, you can turn your thermostats down, and if we were all to do that collectively, it would have a dramatic impact on the marketplace and on consumption.

Does it have to be mandated by law? Need there be a law to tell you that you can save a little money by those actions? I would hope not. I would hope that the wisdom of the pocketbook would suggest that we be prudent as to a procedure to follow.

Senator BINGAMAN and I are going to supply packets to the offices of our colleagues. We hope our colleagues will pass those on. We hope our colleagues might take the time to do a public service announcement over the course of the next month, talking to their folks at home about the opportunity and what is available. I think it is appropriate, and I think it is the right thing to do.

Senator BINGAMAN and I have coalesced with industry to see if they cannot collectively begin to produce a greater message of clarity about the opportunity in the marketplace to conserve and to save and, in so doing, to lower the overall cost of energy and its impact upon the American economy.

Want to give yourself a Christmas gift? Put on a sweater and turn the thermostat down 2 degrees.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent I be permitted to proceed for such time as I may consume in order to finish my statement. It will not be much more than 10 minutes.

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

Mr. KERRY. Subsequently, I ask unanimous consent that the Senator from Arizona, Mr. KYL, be recognized to speak after me.

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

JACK MURTHA, AN AMERICAN PATRIOT

Mr. KERRY. Mr. President, yesterday, as all of us know, JACK MURTHA, one of the most respected Congressmen on military affairs, one of the most respected Congressmen on national security issues, a former marine drill sergeant and a decorated Vietnam veteran, spoke out on our policy in Iraq. Whether one agrees or disagrees with Congressman MURTHA is not the point. He did not come to this moment lightly. Any one of us who knows Congressman MURTHA or anybody who has

worked with him over these years, Republican or Democrat, respects this man, respects his personal commitment to our country, respects his understanding of these issues, and understands he did not come to that moment lightly.

He spoke his mind and he spoke his heart out of love for his country and out of absolute and total unconditional support for the troops, of which he was once one.

I do not intend to stand for, nor should any of us in the Congress stand for, another Swiftboat attack on the character of JACK MURTHA. It frankly disgusts me that a bunch of guys who never chose to put on the uniform of their country now choose in the most personal way, in the most venomous, to question the character of a man who did wear the uniform of his country and who bled doing it. It is wrong. He served heroically in uniform. He served heroically for our country.

Have we lost all civility and all common sense in this institution and in this city? No matter what J.D. HAYWORTH says, there is no sterner stuff than the backbone and courage that defines JACK MURTHA's character and his conscience.

DENNIS HASTERT, the Speaker of the House, who never chose to put on the uniform of his country and serve, called JACK MURTHA a coward and accused him of wanting to cut and run. On its face, looking at the record, looking at his life, JACK MURTHA has never cut and run from anything. JACK MURTHA was not a coward when he put himself in harm's way for his country in Vietnam and he earned two Purple Hearts. He was a patriot then and he is a patriot today. He deserves his views to be respected, not vilified.

JACK MURTHA did not cut and run when his courage earned him a Bronze Star, and his voice ought to be heard today, not silenced by those who would actually choose to cut and run from the truth.

Just a day after Vice President DICK CHENEY, who himself had five deferments from service to his country because, as he said, he had other priorities than serving his country, just 1 day after he accused Democrats of being unpatriotic, the White House accused JACK MURTHA of surrendering.

JACK MURTHA served 37 years in the U.S. Marine Corps. JACK MURTHA does not know how to surrender, not to enemy combatants and not to politicians in Washington who say speaking one's conscience is unpatriotic.

The other day we celebrated what would have been the 80th birthday of Robert Kennedy. When Robert Kennedy opposed the war in Vietnam, despite the fact that his brother and the administration he was in had been involved in articulating that policy, he talked about how there was blame enough to go around. He also said the sharpest criticism often goes hand in hand with the deepest idealism and love of country.

CHUCK HAGEL showed that he has not forgotten that when he said: The Bush administration must understand that each American has a right to question our policies in Iraq and should not be demonized for disagreeing with them.

Too many people seem to have forgotten that long ago and too many of our friends on the other side of the aisle somehow think that asking tough questions is pessimism. It is not pessimism. It is patriotism. It is how one lives in a democracy. We are busy trying to take to Iraq and take to Afghanistan and take to the world the democracy we love and we are somehow unwilling to fully practice it at home.

We have seen the politics of fear and smear too many times. Whenever challenged, there are some Republican leaders who engage in the politics of personal destruction rather than debate the issues. It does not matter who one is. When they did it to JOHN MCCAIN, we saw that it does not matter what political party one is in. When they did it to Max Cleland, we saw that it does not matter if one's service put them in a wheelchair. And when they did it to JACK MURTHA yesterday, perhaps the most respected voice on military matters in all of the Congress, we saw that some in this administration and their supporters will go to any lengths to crush any dissent.

Once again, some are engaged in the lowest form of smear-and-fear politics because I guess they are afraid of actually debating a senior Congressman who has advised Presidents of both parties on how to best defend our country. They are afraid to debate the substance with a veteran who lives and breathes the concerns of our troops, not the empty slogans that sent our troops to war without adequate body armor, without adequate planning, without adequate strategy.

Maybe they are terrified of actually leveling with the American people about the way that they did, in fact, mislead the country into war or of admitting that they have no clear plan to finish the job and get our troops home.

Whether one agrees with Jack Murtha's policy statement yesterday is irrelevant. The truth is there is a better course for our troops and a better course for America in Iraq. The Senate itself went on record this week as saying exactly that. Every Senator in this body voted one way or the other to express their feelings about Iraq.

I intend to keep fighting, along with a lot of other people, to make certain we take that better course for the good of our country.

American families who have lost or who fear the loss of their loved ones plain deserve to know the truth about what we have asked them to do, what we are doing to complete the mission, and what we are doing to prevent our forces from being trapped in an endless quagmire. Our military families understand—I mean, all one has to do is visit with them when they come here and they talk about their sons, their husbands, and their fathers who are over there. They are concerned and want an open debate about what will best support the troops and how to get them home the fastest with the job done the most effectively.

The only way to get it done right in Iraq, the only way to get our sons and daughters home, is for all of us to weigh in on this issue. We also need to be mindful that as the White House yet again engages in a character assassination to stop Americans from listening to the words of a military expert and understanding the consequences, we need to understand the consequences of the road we have already traveled because when one looks at the road we have already traveled, it makes it even more imperative that we have this debate and engage in this dialogue.

It is a stunning and tragic journey that on many different occasions even defies fundamental common sense and leaves a trail of broken promises. From the very start, when we were talking about what it might cost or not cost, when an administration official suggested it would cost $200 billion, he was fired, not listened to. When people wondered how we would pay for the war and we were told the oil will pay for it, while others were saying the oil infrastructure was not sufficient to pay for it, they were not listened to. When the administration could have listened to General Shinseki and actually put in enough troops to maintain order, they chose not to. When they could have learned from George Herbert Walker Bush and built a genuine global coalition so we had the world with us, not most of the world questioning us or against us, they chose not to. When they could have implemented a detailed State Department plan for reconstructing post-Saddam Iraq, they chose not to. When they could have protected American forces and prevented our kids from getting blown up by ammunition that was in the dumps of Saddam Hussein and in the various locations our military were aware of, they chose not to. Instead of guarding those ammunition dumps and armories, they chose not to. When they could have imposed immediate order and structure in Baghdad after the fall of Saddam, Secretary Rumsfeld shrugged his shoulders and said, Baghdad was safer than Washington, DC, and they chose not to take action.

When the administration could have kept an Iraqi army selectively intact, they chose not to. When they could have kept an entire civil structure functioning in order to deliver basic services to Iraqi citizens, they chose not to. When they could have accepted the offers of the nations and individual countries to provide on-the-ground peacekeepers, reconstruction assistance, they chose not to. When they should have leveled with the American people that the insurgency had in fact grown, they chose not to. Vice President CHENEY even absurdly claimed

that the insurgency was in its last throes.

All of these mistakes tell us something. They scream out for a debate. They scream out for a dialogue. They scream out for a policy that gets it right.

We are in trouble today precisely because of a policy of cut and run where the administration made the wrong choice to cut and run from established procedures of gathering intelligence and of how it is evaluated and shared with the Congress; to cut and run from the best military advice; to cut and run from sensible wartime planning; to cut and run from their responsibility to properly arm and protect our troops; to cut and run from history's clear lessons about the Middle East and about Iraq itself; to cut and run from common sense. That is the debate some people appear to want to avoid in this country.

Instead of letting his cronies verbally blast away, the President ought to finally find the will to debate the real issue instead of destroying anyone who speaks truth to power as they see it.

It is time for Americans to stand up and fight back against this kind of politics and make it clear that it is unacceptable to do this to any leader of any party anywhere in our country at any time. We can disagree, but we do not have to engage in this kind of personal attack and personal destruction.

I hope my colleagues will come to the floor and engage in this debate. Our country will be stronger for it. That is what we ought to do instead of attacking the character of a man such as JACK MURTHA. Believe me, that is a fight nobody is going to win in our America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I ask unanimous consent to consume such time as I may take.

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

Mr. KYL. Mr. President, I am going to speak in a moment about the PATRIOT Act, but before I do, I want to respond to a couple of comments that were made by the Senator from Massachusetts.

I served with Congressman MURTHA when I was in the House of Representatives, and there is no greater patriot in the United States than Congressman MURTHA. In that, the Senator from Massachusetts and I agree. I disagree with Congressman MURTHA's opinions, but that is a matter of debate and that is one of the reasons we have the kind of open society that we do.

I do not think anyone is trying to crush debate or dissent or prevent questions from being asked. But it is a fact that when the President of the United States is accused of deliberate manipulation of intelligence to bring us into war—some have even said lied in order to bring us into war—that deserves response. That is part of a healthy debate.

When the President spoke in response, I think he was entitled to be listened to and not ridiculed and not condemned for criticizing those who disagreed with him. Neither side need back away from making their arguments and arguing that the other side is wrong. But of course no one should be questioning anyone else's patriotism. It is assumed anyone who serves this Government, and certainly anyone who has put on the uniform of this Government, is a patriot. In the case of Congressman MURTHA, I would be the first to assert that fact.

I think there are two critical facts with respect to this dispute. The first set of facts is that our intelligence, and that of virtually every other nation in the world, believed that Saddam Hussein was a threat to the world and had weapons of mass destruction and in some cases was developing capability for additional weapons of mass destruction, such as nuclear weapons. Some of that intelligence turned out not to be correct. But it does not mean that the people who debated the issues were liars or deliberately misrepresenting the facts. I daresay, if you took comments I made on the floor of the Senate and comments the Senator from Massachusetts made on the floor of the Senate, they would align pretty closely. They were pretty similar because they were based on the same intelligence. The same thing was said by other Democrats and Republicans, by people in the administration, by people in the former administration. I do not think it is appropriate to assign deliberate motives to mislead to any of those people.

I myself believe that the information was not correct with respect to the weapons of mass destruction but that the people who were giving it to us honestly believed it was correct. So I don't even think the people in the CIA were deliberately misleading anyone, though they turned out to be wrong. Can't we agree that people make mistakes, especially with respect to that murky area of intelligence where nothing is ever black and white, where everyone is always gathering bits and pieces of information and trying to construct a jigsaw puzzle out of it when a lot of pieces are missing and where the enemy is deliberately trying to deceive you? It is very difficult business. While I am somewhat critical, as a member of the Intelligence Committee, of the people who were engaged in the activity at the time, I don't question their motives either.

The other fact that I think is true is that it would be wrong for us to leave Iraq now. This is where I would disagree with Congressman MURTHA. I believe the consequences of leaving or setting up a timetable to leave soon, before the job is done, would not only be absolutely devastating for the people in Iraq who have been trying to set up their own government but would also set us back in the war against these terrorists, these evildoers, these radical Islamists who are watching very carefully what we do in Iraq. When you remember what Saddam Hussein said about the weak horse and the strong horse, you know how important it is for the United States to maintain a firm, strong position with respect to completing the job in Iraq.

To the extent that there is a suggestion that we will back out if they keep enough pressure on us, it does play into their hands because they simply play the waiting game in order to wait us out until they can move in and do more evil deeds. That is where I think the debate comes down. It is a legitimate debate to have, but I think the President is on the right side of that debate. We have to finish the job before we withdraw.

Mr. KERRY. Will the Senator yield?

Mr. KYL. I am happy to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I respect the comments of the Senator and I appreciate the way he has approached it and I am grateful to him and thank him, as I am sure others do, for his comments about Congressman MURTHA. I know he would agree with me that those who suggested what he is saying is cowardly or suggested that is surrender, that those are words probably inappropriate in this debate. I think the Senator would agree with me that those characterizations have no place here. And he is right about the question of how everybody approached the intelligence. We all did have a unified belief about the existence of weapons—most of us.

But I disagree with the Senator. I would ask him if he does not agree that there are legitimate areas of inquiry, which the Intelligence Committee is now pursuing, with respect to what happened to certain intelligence that came to the Congress? For instance—about five areas. One was the speech that was made by the President, where he referenced nuclear materials coming from Africa which, in fact, the CIA on three different occasions, both verbally and in writing, informed the White House: Don't use this. But nevertheless it was used.

Whether that was intentional or inadvertent, all we know is that winds up being misleading because the CIA disagreed with the evidence.

Likewise, telling America they could deliver biological, chemical weapons within the period of 45 minutes, which was disagreed with in the intelligence community, was not signed off within the intelligence community.

Likewise, suggesting Iraq had trained al-Qaida in the creation of bombs, bomb making, and poison creation—not agreed by the intelligence community; in fact, erroneous.

Likewise, as the Vice President said on several occasions, that there was a meeting between Iraq and al-Qaida operatives, a meeting that the intelligence community did not substantiate, which we now know did not take place.

Those are, on their face, misleading representations made to us, which Members of the Congress operated on. I would assume the Senator would agree the mere fact that there were no weapons of mass destruction means we were all misled. Whether it was intentional is the operative question.

I can't tell you whether it was intentional. But I certainly know that when you ignore the CIA's warnings, don't use this intelligence, and nevertheless it winds up in the State of the Union message, there is a disconnect that raises the most serious questions, that leaves a lot of us wondering.

I ask the Senator, does he not agree that those instances where the intelligence community is in disagreement and they don't tell us they are in disagreement and we don't get the same intelligence, provides some serious questions?

Mr. KYL. Mr. President, I was very happy to have the Senator from Massachusetts take a long time to make a lot of points, asking an important question. Therefore, I am happy to engage in what amounts to a debate on the issue. I would be delighted to comment on the specifics that he points out.

I served on the Intelligence Committee for 8 years during this period of time and have a fair degree of information about it. I need to reflect a little bit carefully about what one can now say because, after a while, you realize, when you are on the committee, it is better not to say a lot because it might be one of the things you should not be talking about. But I think I should speak to each of these items.

The last one first. No, I don't agree that being in error is the same as misleading. I don't think that the people in the intelligence agencies were misleading us. They were, in some instances, in error. Frequently, they expressed their views with caveats and degrees of certainty that, frankly, are not reflected in the public debate.

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

Mr. KYL. Let me make my point here. They have a very careful way of expressing their views. In the public debate, I have noted the political people are not nearly as nuanced and careful in expressing these views as the member of the intelligence community is.

Second, with respect to that, ordinarily the way that views were expressed to us, and specifically in this case, they represented the majority opinion or the consensus within the intelligence community. Where there were significant questions or differences of opinion within the intelligence community, those were noted and sometimes with respect to some issues, there were divisions. Without getting into a lot of detail, there has been a lot of talk about another issue that the Senator did not raise, the so-called aluminum tubes. Without getting into a big debate about it, you had the majority of the intelligence community believing that those were for one purpose related to production of nuclear materials. And you had a couple of other agencies that had expertise in the area saying they didn't think so.

I am not sure that anyone has ever concluded which were actually correct, or not, but a lot of information has been thrown out that clearly the majority opinion was wrong. I don't know that one can say that.

So I think we have to be careful. There are frequently, in intelligence estimates, little caveats: We are not sure how good this particular source is; we are not sure about this particular element.

But usually a consensus is reached. That consensus is what was briefed to us and that is what we were relying on. With respect to the four specific points—with respect to the issue of yellow cake coming from Niger, it was a fact that the intelligence the United States had was not nearly as conclusive as the intelligence from Great Britain, and therefore the President was advised—not the President himself directly but his speechwriters were advised—not to suggest that our intelligence confirmed the attempts of Iraq to acquire this nuclear material from Niger but rather to refer to a different intelligence service which, in fact, had concluded that the attempt had been made. That was the British service and that was the reference in the speech. The British service still stands by its position.

With respect to the bioweapons, there was very good evidence to suggest, prior to the war, that Saddam Hussein not only had a viable bioterrorism program but that he had even mobilized—in one respect, mobilized that program.

I am not certain we can say, from the Senate floor, how we have finally evaluated the intelligence with respect to that. I think it would be probably difficult for any Senator to discuss the issue in great length. I would be willing to acknowledge that, certainly, questions have been raised about whether it turns out that there were mobile units devoted to creation of bioweapons.

Third, with respect to the intelligence that Iraq agents had actually instructed terrorists in bomb making and poison making, that information was very clear. It was issued by CIA Director George Tenet. It was public information, so that can be discussed on the floor of the Senate, and I am aware of nothing that draws any question about that particular evidence. I do not recall whether it specifically related to al-Qaida or terrorists or al-Qaida-connected terrorists. I probably should not speak to that issue because I am not certain how much is classified. But it is absolutely certain in public testimony, and in a letter George Tenet specifically sent to the Congress he discussed the issue of Iraq training terrorist bomb makers in the art of chemical weapon-making.

Finally, in regard to this alleged meeting that never actually occurred, if it is the meeting in Czechoslovakia that the Senator was referring to, that is a matter of dispute. I don't think it has ever been resolved one way or the other.

The point of all of this is it is one thing to say the intelligence was inconclusive and in some cases that there were disputes in the intelligence community and in some cases it was not accurate. It is quite another to allege that the people who used the intelligence were misleading other people.

Certainly, I was not deliberately misleading anyone, and I am certain the Senator from Massachusetts was not deliberately misleading anyone when we said roughly the same thing based upon the same intelligence that suggested that Saddam Hussein was a threat and had weapons of mass destruction.

The final point on this, and then I do want to turn to the PATRIOT Act, there is a bit of a double standard in that critics of the administration are now saying: You can't just look to the consensus opinion, you need to look at some of those within the intelligence community who were dissenting about certain aspects of intelligence, the so-called nuggets. If you look deeply into this report, you will find there was some element of it that did not quite jibe with the rest of the consensus or there was some entity in our Government that didn't totally agree with the consensus opinion. As I said, you are going to see that through any national intelligence estimate or any other description of intelligence analysis.

We encourage that. One of the 9/11 Commission recommendations, and the other commissions that have looked into this, is that there is not enough devil's advocacy going on. There is too much ''group think'' within the intelligence community. So it is a good thing to have that intelligence questioned.

I remember there was actually criticism of Vice President CHENEY because he went down to the CIA headquarters and had the temerity to ask these agents: Are you sure about this? Are you sure about this intelligence?

They said: What's he doing that for?

He is a so-called consumer of the intelligence. He has every right to say: Are you absolutely sure of this?

People within the administration should be questioning as well. That is why I think it is so unfortunate that there is, literally, a cabal to attack the Defense Department for questioning some of the intelligence community's estimates—not all of which turned out to be right, as we know. But there is an investigation that has been actually formally requested. In order to get it resolved, the Defense Department has agreed to conduct an inspector general's investigation into one of the offices of the Department of Defense, into the question of whether it should have questioned the intelligence of the

CIA and taken its analysis and its questions to other people within the Defense Department or the national security apparatus of the administration.

Why not? The whole point of these commission recommendations is people ought to be asking questions. The CIA is not a monastery of monks who get manipulated intelligence that nobody else ever looks at. The whole point of gathering intelligence is so our policymakers can use it and make decisions based upon it. When the policymakers have questions about it, they have every right to ask those questions. And when there is some evidence that suggests the intelligence is not exactly accurate, they have a duty to raise that kind of issue.

There is a bit of a double standard going on that when one wants to criticize the administration and wants to play devil's advocate, there was a little bit of evidence over here that contradicted the consensus in the community, and we should have paid more attention to that. Maybe so. You can't turn around and criticize those, in this case, in the Department of Defense who saw the same infirmities, and who had questions about the CIA intelligence and now are being criticized because they had the temerity to raise those questions. You can't have it both ways.

In reality, intelligence is an imperfect proposition at best, and we ought to be playing devil's advocate and be asking tough questions about it. But I daresay, unless you get very good evidence that someone was deliberately lying or misleading, you shouldn't throw those kinds of words around.

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

Mr. KYL. I would be happy to yield.

Mr. SESSIONS. I hope every Senator was listening to Senator KYL's explanation of the important issues that have been raised. I hope the American people are listening. He served on the Intelligence Committee. He has been through these debates from the very beginning. He is a man of integrity, and he will be responsible in summarizing the matters that came before us.

He indicated that we hear allegations that things were black and white, when those of us who heard the briefings didn't hear them that way. They weren't black and white. The aluminum tubes—I ask the Senator from Arizona, regardless of the detail of it, whether he heard from those who debriefed us and got various opinions about that issue, and we were not misled. We were told there were various ways to interpret that evidence, were we not?

Mr. KYL. Mr. President, I say that is exactly right. In fact, the National Intelligence Estimate itself specifically characterized the dissenting as well as the majority views with respect to what those tubes were for. The majority view was that they were for centrifuge, for weapons material production. The minority view was they might be for artillery shells, or some other kind of projectile. There were two agencies within our government that held that latter view. The majority of the intelligence community held the former view.

But, yes, I remember as a member of the committee being briefed on that and hearing testimony on it numerous times.

Mr. SESSIONS. That was before 78 Members of this body—a majority of the Democratic Members along with a majority and maybe all of the Republicans—voted to authorize hostilities in Iraq.

Mr. KYL. That is true.

Mr. SESSIONS. We knew these subtleties and disagreements, and we were given the best estimate that the intelligence agency was given.

Let me ask the Senator this: The CIA is the Central Intelligence Agency. The Senator talked about the contradiction between saying at one point you should follow one or the other, or the minority opinion. Is one of the responsibilities of the CIA to review all intelligence and help advise the President, as that central agency, what he should take as reliable?

Mr. KYL. Mr. President, the Senator from Alabama is absolutely correct. There is an important factor the American people need to understand. There is not just one intelligence agency, the CIA; there are lots of different elements of our Government gathering information, a lot of it secret information. They meet as a group to try to put this together and to reach a consensus. But when the estimates are briefed to us and to the President, they try to arrive at a consensus. Frequently, that consensus is less certain because there are some dissenting views that characterize the consensus. Doubts are expressed in certain technical ways.

It is one thing for the community to say it is the community's judgment; of course, that is stepping down from saying we know it as a fact. A judgment is not fact, it is an opinion. Then there are further gradations down. We are exposed to those same—these are all footnoted. We all know who believed what. But at the end of the day, in order for us to get good advice, they try to put it together in a form that reaches a conclusion. Sometimes because there are differences within the intelligence community, those conclusions are not as certain or as certainly expressed as they are on other occasions because of that uncertainty.

Mr. SESSIONS. That is beautifully expressed. I think that is so important for us to know.

I want to drive home one point. The Senator from Massachusetts and other Senators have been complaining about these matters. I remember the briefings we attended. Every Senator was invited. Every Senator had the right to ask questions. People stayed late, if they chose to, and asked additional questions. They were given these nuanced opinions. It was only after all that, was it not, that this Senate, after full debate, voted to authorize military actions in Iraq.

Mr. KYL. Mr. President, the Senator from Alabama is correct. I would say that we should not make too much of these nuance opinions and disagreements. In one sense, they are important; but in another sense, you have to balance that against the fact that there was a mountain of evidence in different areas that all add up to the same proposition. And add to that—some of that turned out not to be correct—but add to that the element of judgment.

This can't be overemphasized. Intelligence analysts apply judgments and common sense to the evidence that they have. Because the evidence is rarely black and white, you very rarely get the bad guy to say, I will tell you everything I know, and it is everything you need to know about this. So you have to exercise judgment.

After the first gulf war, we later learned that Saddam Hussein was about 6 months away from having a nuclear weapon program. That is fact No. 1.

Fact No. 2: Throughout the ensuing decade, he hid his programs. He tried to deceive the inspectors. He refused to comply with U.N. resolutions to release information. One could, therefore, surmise—or at least it would not be a bad presumption to engage in—that if he had it at one point, or almost had it, we had evidence he was trying to get it. Again, he was hiding the ball at every opportunity. The intelligence analysts have to say, Which way am I going to presume this, that he does or that he doesn't? They concluded that there is every indication that we had better assume that he does.

The policymakers have to take that a step further. We say they are not absolutely certain; they are pretty sure, but they are not absolutely certain which way we should flop on this. Should we flop to the direction of inaction? Let's wait until we have absolute proof before we do anything, or go the other way? This is pretty dangerous business. If, in fact, he has, we had better act now before it is too late.

We think we will take the action that is based upon the proposition that he will have it. That is a judgment that we engaged in.

As my colleague, the Senator from Arizona, so eloquently has pointed out, the choice was when, not if, we would face Saddam Hussein. The question was, would we do it on his terms or on ours? We chose to do it on ours. The result is Saddam Hussein today stands trial for mass murder. The Iraqi people have an opportunity for freedom, and we have an opportunity to transform that region of the world into one that supports peace and opposes evildoers and terrorists as opposed to one which was a hot bed when Saddam Hussein was in charge.

Mr. SESSIONS. Mr. President, again, I thank the Senator for his thoughtful

and thorough analysis of how we came to know what we knew and how we came to make the decisions about matters that came before us. We think there is no doubt that Saddam Hussein used weapons of mass destruction against his own people. We know that. That is indisputable. Where it went subsequently I don't know, and people are shocked that we have not found them. We know that the French intelligence agency—the French Government opposed our entry into the war—believed he had weapons of mass destruction.

Those matters were very important. And what I am so glad about is people have heard what Senator KYL said and discussed, which is relevant to this Senate. We knew these things, fellow Senators. We discussed these things. Grown people make decisions based on the best evidence they have.

We had many hearings, top secret briefings, and every Senator could go. We heard the argument. We heard the evidence. We cross-examined, and we heard the uncertainties and certain levels expressed by the authorities that came before us. Then we came into this body and we voted to send our soldiers to execute our policy in harm's way. And we owe those soldiers our support. We don't need to be undermining the President, or even ourselves and our system, as in this circumstance making the policy. We voted by a 78-to-22 vote to make it more difficult to achieve and to place our soldiers at greater risk.

I thank the Senator for his wonderful comments.

THE PATRIOT ACT

Mr. KYL. Mr. President, I want to get to the matter I came to speak on, the PATRIOT Act.

The Senator from Massachusetts spoke to us about having respect for one of our colleagues in the other body who is, in fact, a patriot and who certainly should never be called a coward.

I also want to ask that same deference to those in the Defense Department and others who were doing their duty for our country, who could have been in the private sector making a lot of money and taking care of their families but chose to serve their country in another way in later life by acting on behalf of all of us in matters of national security. The Secretary of Defense, Don Rumsfeld, Paul Wolfowitz, Doug Fife, who headed the office I spoke of, these are patriots. And for anyone to suggest that someone like Doug Fife or Don Rumsfeld or Paul Wolfowitz were misleading anyone is, frankly, about as low as you can get. And even loose words such as ''unlawful'' have been thrown about.

This is a very bad state of affairs that we have come to when that is the kind of discourse we have in talking about people who have served our country honorably. I hope my colleagues will join me in trying to elevate the rhetoric rather than taking it down further. And that applies to everybody—Democrat and Republican Members of Congress, or the administration.

I came to talk about the PATRIOT Act. I would like to make some comments because we are in the middle of a big debate in the Senate and House about the reauthorization of the PATRIOT Act. If we don't reauthorize the PATRIOT Act, all of the tools that we have given to our law enforcement and intelligence community to help us win the war on terror are going to—not quite, but most of those tools will cease to exist. They will expire. That is why we have to reauthorize it.

Just as it is important for us to give the men and women in the military the tools they need in the missions we send them on, the war on terror, so, too, it is for us to ensure our law enforcement and our intelligence people have the tools they need to carry out the mission that we ask of them.

In the war on terror, intelligence and the ability to use it in the law enforcement community are critical to our success.

One of the greatest things we accomplished after 9/11 in passing the PATRIOT Act was to tear down the wall that had been created between our intelligence-gathering organizations and law enforcement. They couldn't talk to each other. One could gather information, but they couldn't give it to the other, and vice versa.

As a result, neither were able to do their job in getting information about terrorists and putting out that information to proper and good use.

There is virtually no disagreement that I know of that this part of the PATRIOT Act has been critical to our success since 9/11. Yet there are those on both sides of the aisle in this body who are threatening to hold up the reauthorization of the PATRIOT Act because they haven't gotten their way on every little thing that they want, and some of them don't even know what the conference committee has been negotiating. I am on that conference committee and I know what we have discussed, and I know what is still a matter of issue out there.

I want to talk a little bit about the PATRIOT Act because there is a great deal of ignorance about what this important tool does for our war on terror. And we cannot be ignorant, even though it is a matter of law and a little bit complicated. We don't have the luxury of being ignorant about this. We have to understand it to appreciate it.

I will speak to that for a little bit.

I believe, like some great controversies of the time, history books will record that the controversy over the PATRIOT Act was actually something we will look back on and say, What was all the fuss about? It is a little bit like when President Reagan talked about tearing down the wall and calling the Soviets the ''Evil Empire.'' There was great handwringing. This was not going to be good for our foreign policy. We look back on it now and say, What was all the fuss about? He was right. It was a good thing.

Those who are threatening to hold up the reauthorization of the PATRIOT Act should have pretty much the same words spoken to them about the wall. This time we are talking about the wall between intelligence and law enforcement. I say to them, ''Tear down this wall.'' We did it in the PATRIOT Act. They are about to let the PATRIOT Act expire because they have some view that every little thing they want has not gotten accomplished in the PATRIOT Act.

This is important business. For those who are threatening to prevent the reauthorization of the PATRIOT Act, I challenge them to come to the Senate today, tomorrow. I will be here. Let's have the debate.

What are the big deals in the PATRIOT Act? The biggest is the wall coming down, as I said. There is no disagreement about that. Yet, it is going to go right back up if we do not act.

The second provision in the PATRIOT Act that people have focused on is the so-called section 215 which allows a FISC, Foreign Intelligence Surveillance Court, to issue subpoenas to produce business records. That authority has been in the law for a long time. But we added it to the PATRIOT Act in order to allow the FBI to seek an order from this special court that was created for:

> . . . the production of tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information.

Not to obtain foreign intelligence information. And FISC defines ''foreign intelligence'' as information relating to foreign espionage, foreign sabotage, or international terrorism.

Section 215 is basically a form of subpoena authority, such as that allowed for numerous other types of investigation. A subpoena is merely a request for particular information. Unlike a warrant—and this is important—a subpoena does not allow a government agent to enter somebody's property and take things. It is only a request. If the recipient objects, the Government must go to court and defend the subpoena and seek an order for its enforcement. Most Federal agencies have the authority to issue subpoenas, and many agencies have multiple subpoena authorities.

The Justice Department has identified over 335 different subpoena authorities in the United States Code. One can hardly contend that although the Federal Government can use subpoenas to investigate Mohammed Atta if it suspects he is committing Medicare fraud that it should not be allowed to use the same powers if it suspects he is planning to fly airplanes into buildings. What sense would that make?

Some critics argue that most of the existing authorities are different because section 215 subpoenas do not relate to heavily regulated industries