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Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Father, we have often stumbled into Your presence not sure why we have come, and yet You continue to show us Your compassionate mercy.

Inspire the Members of this body today with faith, hope, and love. Renew their spiritual vision so that they will continue to please You. Protect them from pride, and deliver them from confusion. Inspire them to persevere. Answer the perplexing questions they face, as You fill them with Your healing spirit.

May they express their gratitude to You by their faithful deeds. Grant them this day the grace to praise You with their lives.

We pray in Your life-changing Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this afternoon, we have an order for a period for the transaction of morning business so that Senators can come to the Chamber to introduce legislation and make statements.

ORDER OF PROCEDURE

I now ask unanimous consent that the period extend until 5:20 p.m., with the time equally divided between the two leaders or their designees.

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

Mr. FRIST. Mr. President, at 5:20 p.m., we have an order to proceed to executive session to consider the nomination of Francisco Besosa to be U.S. district judge for the District of Puerto Rico. The agreement provides for 10 minutes of debate prior to a vote on the nomination, which will occur at 5:30 p.m.

I have said repeatedly over the last days and weeks that we will be finishing our work at the end of this week. Accordingly, I ask for the cooperation of all of our colleagues as we bring together a lot of legislation that has been produced over a long period of time, but over the course of the week it will be a challenge to consider all of that legislation. It is going to take cooperation and working together to allow us to continue to govern with these meaningful solutions, challenges, and issues which have been set before us.

We have the pending border fence legislation that we will need to complete. We have legislation relating to the terrorist tribunals, the military commissions, the Hamdan decision that will be considered and finished prior to adjournment. In addition, we have several conferences that will be completed in the next several days—Defense appropriations and Homeland Security appropriations—that we absolutely must finish this week as well. Other legislation, such as port security, is being worked on very aggressively, and I believe we should be able to finish that bill and bring it to the floor as well.

We have a very small window in which to complete our business over the next 6 days. I have said our intention is to finish on Friday, although if we are unable to do that, of course, we will be here on Saturday to wrap things up. I will update my colleagues over the course of the week on progress that is being made and how that affects plans. At this point, cooperation is key and flexibility with people's schedules will be key in order that we get our work done and leave at the end of the week.

MEASURES PLACED ON THE CALENDAR—S. 3925, S. 3929, S. 3930, S. 3931

Mr. FRIST. Mr. President, I understand there are four bills at the desk due for a second reading.

The PRESIDENT pro tempore. The clerk will report the bills by title for the second time.

The assistant legislative clerk read as follows:

A bill (S. 3925) to provide certain authorities for the Secretary of State and the Broadcasting Board of Governors, and for other purposes.

A bill (S. 3929) to authorize military commissions to bring terrorists to justice, to strengthen and modernize terrorist surveillance capabilities, and for other purposes.

A bill (S. 3930) to authorize trial by military commissions for violations of the law of war, and for other purposes.

A bill (S. 3931) to establish procedures for the review of electronic surveillance programs.

Mr. FRIST. Mr. President, in order to place the bills on the calendar under the provisions of rule XIV, I object to further proceedings en bloc.

The PRESIDENT pro tempore. Objection is heard. The bills will be placed on the calendar.

Mr. FRIST. Mr. President, I yield the floor.

The PRESIDENT pro tempore. The assistant majority leader.

ARMY RECRUITING

Mr. MCCONNELL. Mr. President, we may not see it on the front page, but there is good news. Last Friday, the U.S. Army met its annual recruiting goal more than a week ahead of schedule. This will cap the Army's best recruiting year since 1997.

Let me repeat that. The Army will be completing its best recruiting year in almost a decade—this despite all the gloom and doom we have heard about young people not wanting to serve their country in the war on terror.

On Friday, in New York City, Shirley Salvi, a 23-year-old graduate of Rutgers, joined the Army as the 80,000th soldier to enlist this year. That is 80,000 soldiers this year. She will report to Fort Leonard Wood in Missouri to become either an Army linguist or intelligence analyst.

In spite of all the danger and all the hardship and sacrifice involved, thousands of young Americans, such as Ms. Salvi, are stepping forward to say: I will defend my country.

We have an All-Volunteer Army, and it is the best in the world. While the enemy fights solely to instill fear and death, our soldiers fight for the hope and opportunity that only comes with liberty.

Before the fiscal year is over, the Army anticipates having a total of 504,000 soldiers—an increase of 12,000 from last year. The Army Reserve and Army National Guard also expect to meet their recruiting goals for this year. This increased recruiting comes even as administrators in a number of institutions of higher learning and even some high schools remain openly hostile to military recruiting on campus.

Retention in the Army also shows encouraging signs. In July of this year, GEN Pete Schoomaker, Chief of Staff of the Army, noted that the reenlistment rate for two of the divisions deployed in Iraq was over 140 percent. One of those divisions, I am proud to report, is the 101st Airborne located in my home State of Kentucky.

I think what this good recruiting and retention news reflects is basically three things:

First, it reflects the patriotism and commitment of today's youth. The generation coming of age today has grown up with the war on terror, and they understand its importance. They understand the need to defend America's values. They understand what is at stake, and they want to do their part by volunteering to protect the Nation from al-Qaida and others who would do this Nation harm.

Second, I think this good Army recruiting news reflects the recognition by today's youth that a career in the military is, indeed, a noble calling. In fact, it is hard to think of anything more honorable than serving and protecting America.

Third, the achievement of the Army's recruiting goal a week early sends a strong signal to our allies and our enemies in the war on terror. It shows that the American people are resolute in defending our Nation and in defending freedom.

I must say, I take some pride in this good news about recent recruiting numbers since the U.S. Army recruiting command is located at another base in my State, Fort Knox. The command is doing a great job for America.

I salute Ms. Salvi and the thousands of other volunteers like her who have joined the Army this year. I thank them for their patriotism and for their future service on behalf of our country.

OVERSIGHT HEARINGS ON IRAQ AND THE GLOBAL WAR ON TERROR

Mr. MCCONNELL. Mr. President, I wish to say a few words about oversight hearings on Iraq and the global war on terror.

Just last week, our good friend, the Democratic leader, complained that there has not been ''a single oversight hearing, none.'' That was our good friend, the Democratic leader, saying there hasn't been a single oversight hearing on Iraq and the global war on terror. But the Senate has conducted scores of hearings on Iraq and related issues since 2003. For example, the Armed Services Committee held more than 20—20—hearings on such topics as military operations in Iraq and Afghanistan, operations and strategy in Iraq, and Iraq-Afghanistan and the global war on terrorism. That is 20 hearings by the Armed Services Committee alone. The Foreign Relations Committee has held more than 30 hearings in the past 3 years, including hearings on post-Saddam Iraq, on the status of and prospect for Iraq reconstruction, Iraq's transition to sovereignty, and post-transition Iraq. That is 30 hearings by the Foreign Relations Committee on Iraq and the war on terror in the last 3 years. And then there is the Judiciary Committee, the Banking Committee, and the Homeland Security Committee hearings. All told, more than 80—80—hearings have been held on Iraq and related issues.

I ask unanimous consent that a listing of all of these hearings to which I just referred indicating the Senate has engaged in extensive oversight on the war in Iraq and the war on terror over the last 3 years be printed in the RECORD.

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

SENATE FOREIGN RELATIONS COMMITTEE HEARINGS

UN Weapons Inspector's Report, CQ Committee Hearings, 108th Congress (Event Date: 1/30/2003)

Post-Saddam Iraq, CQ Committee Hearings, 108th Congress (Event Date: 2/11/2003)

Afghanistan and the War on Terror, CQ Committee Hearings, 108th Congress (Event Date: 2/12/2003)

Post-Conflict Afghanistan, CQ Committee Hearings, 108th Congress (Event Date: 2/26/2003)

Aid to Turkey and Issues in Northern Iraq, CQ Committee Hearings, 108th Congress (Event Date: 3/5/2003)

Reconstruction of Iraq, CQ Committee Hearings, 108th Congress (Event Date: 3/11/2003)

Political Future of Iraq, CQ Committee Hearings, 108th Congress (Event Date: 3/13/2003)

Diplomacy and the War on Terrorism, CQ Committee Hearings, 108th Congress (Event Date: 3/18/2003)

An Enlarged NATO: Moving Forward on Iraq, CQ Committee Hearings, 108th Congress (Event Date: 4/29/2003)

Iraq Stabilization and Reconstruction, CQ Committee Hearings, 108th Congress (Event Date: 5/22/2003)

Repercussions of Iraq Stabilization and Reconstruction Policies, CQ Committee Hearings, 108th Congress (Event Date: 6/12/2003)

Status and Prospects for Iraq Reconstruction, CQ Committee Hearings, 108th Congress (Event Date: 7/23/2003)

Review of Iraq Policy and Issues, CQ Committee Hearings, 108th Congress (Event Date: 9/23/2003)

Review of Iraq Policy and Issues Updated, CQ Committee Hearings, 108th Congress (Event Date: 9/24/2003)

Security and Democracy in Afghanistan, CQ Committee Hearings, 108th Congress (Event Date: 10/16/2003)

Afghanistan Reconstruction, CQ Committee Hearings, 108th Congress (Event Date: 1/27/2004)

Iraq Stabilization and Reconstruction, CQ Committee Hearings, 108th Congress (Event Date: 3/9/2004)

Effect of Madrid Attacks on U.S. European Cooperation, CQ Committee Hearings, 108th Congress (Event Date: 3/31/2004)

Iraq's Transition to Sovereignty, CQ Committee Hearings, 108th Congress (Event Date: 4/20/2004)

Iraq's Transition to Sovereignty, CQ Committee Hearings, 108th Congress (Event Date: 4/21/2004)

Iraq's Transition to Sovereignty, CQ Committee Hearings, 108th Congress (Event Date: 4/22/2004)

Afghanistan, CQ Committee Hearings, 108th Congress (Event Date: 5/12/2004)

Iraq: The Way Ahead, CQ Committee Hearings, 108th Congress (Event Date: 5/18/2004)

Iraq: The Way Ahead, CQ Committee Hearings, 108th Congress (Event Date: 5/19/2004)

Post-Transition Situation in Iraq, CQ Committee Hearings, 108th Congress (Event Date: 7/22/2004)

Accelerating U.S. Assistance to Iraq, CQ Committee Hearings, 108th Congress (Event Date: 9/15/2004)

Reshaping U.S. Policy in Iraq and Middle East, CQ Committee Hearings, 109th Congress (Event Date: 2/1/2005)

Iran: Weapons Proliferation, Terrorism and Democracy, CQ Committee Hearings, 109th Congress (Event Date: 5/19/2005)

Iraq Ambassador Nomination, CQ Committee Hearings, 109th Congress (Event Date: 6/7/2005)

The Future of Iraq, CQ Committee Hearings, 109th Congress (Event Date: 7/18/2005)

The Future of Iraq, CQ Committee Hearings, 109th Congress (Event Date: 7/19/2005)

The Future of Iraq, CQ Committee Hearings, 109th Congress (Event Date: 7/20/2005)

Iraq and U.S. Foreign Policy, CQ Committee Hearings, 109th Congress (Event Date: 10/19/2005)

Iraq Stabilization and Reconstruction, CQ Committee Hearings, 109th Congress (Event Date: 2/8/2006)

Iraq Update, CQ Committee Hearings, 109th Congress (Event Date: 7/13/2006)

SENATE ARMED SERVICES COMMITTEE HEARINGS

Post-Conflict Iraq, CQ Committee Hearings, 108th Congress (Event Date: 2/26/2003)

NATO Enlargement Post-Conflict Iraq, CQ Committee Hearings, 108th Congress (Event Date: 4/10/2003)

U.S. Policy and Military Operations in Afghanistan and Iraq, CQ Committee Hearings, 108th Congress (Event Date: 5/23/2003)

Iraqi Weapons of Mass Destruction, CQ Committee Hearings, 108th Congress (Event Date: 6/6/2003)

Lessons Learned from Operation Iraqi Freedom, CQ Committee Hearings, 108th Congress (Event Date: 7/9/2003)

Military Operations Briefing, CQ Committee Hearings, 108th Congress (Event Date: 9/3/2003)

Iraq Briefing, CQ Committee Hearings, 108th Congress (Event Date: 9/11/2003)

Operations and Reconstruction in Iraq, CQ Committee Hearings, 108th Congress (Event Date: 9/25/2003)

Report on Iraq's Weapons of Mass Destruction, CQ Committee Hearings, 108th Congress (Event Date: 10/3/2003)

Iraq Stabilization Report, CQ Committee Hearings, 108th Congress (Event Date: 3/30/2004)

U.S. Policy and Operations in Iraq and Afghanistan, CQ Committee Hearings, 108th Congress (Event Date: 4/20/2004)

$25 Billion Iraq Contingency Fund, CQ Committee Hearings, 108th Congress (Event Date: 5/13/2004)

Treatment of Iraqi Prisoners, CQ Committee Hearings, 108th Congress (Event Date: 5/19/2004)

Iraq Multi-National Force Commander Nomination, CQ Committee Hearings, 108th Congress (Event Date: 6/24/2004)

Transition to Sovereignty in Iraq, CQ Committee Hearings, 108th Congress (Event Date: 6/25/2004)

Military Operations In Iraq and Afghanistan, CQ Committee Hearings, 109th Congress (Event Date: 2/3/2005)

Iraq Issues, CQ Committee Hearings, 109th Congress (Event Date: 6/23/2005)

The War on Terror, CQ Committee Hearings, 109th Congress (Event Date: 6/30/2005)

Operations and Strategy In Iraq, CQ Committee Hearings, 109th Congress (Event Date: 9/29/2005)

Defense Authorization: Contracting Issues in Iraq, CQ Committee Hearings; 109th Congress (Event Date: 2/7/2006)

Iraq, Afghanistan and the Global War on Terrorism, CQ Committee Hearings, 109th Congress (Event Date: 8/3/2006)

SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE HEARINGS

Consolidating Intelligence Analysis, CQ Committee Hearings, 108th Congress (Event Date: 2/26/2003)

Combating Terrorist Financing, CQ Committee Hearings, 108th Congress (Event Date: 9/23/2003)

Terrorism Financing, CQ Committee Hearings, 108th Congress (Event Date: 6/15/2004)

9/11 Commission Report, CQ Committee Hearings, 108th Congress (Event Date: 8/26/2004)

Improving Ability of Intelligence Community to Fight Terrorism, CQ Committee Hearings, 108th Congress (Event Date: 9/8/2004)

Contracting and Procurement In Iraq, CQ Committee Hearings, 109th Congress (Event Date: 8/2/06)

SENATE JUDICIARY COMMITTEE HEARINGS

War Against Terrorism, CQ Committee Hearings, 108th Congress (Event Date: 3/4/2003)

Terrorism in the United States, CQ Committee Hearings, 108th Congress (Event Date: 6/26/2003)

Law Enforcement and Terrorism, CQ Committee Hearings, 108th Congress (Event Date: 7/23/2003)

Terrorism in the Post 9–11 Era, CQ Committee Hearings, 108th Congress (Event Date: 9/10/2003)

Recruitment of Terrorists in Prisons and the Military, CQ Committee Hearings, 108th Congress (Event Date: 10/14/2003)

Efforts to Prevent Terrorism in the United States, CQ Committee Hearings, 108th Congress (Event Date: 10/21/2003)

Seaport Security Since 9–11, CQ Committee Hearings, 108th Congress (Event Date: 1/27/2004)

Cyberterrorism, CQ Committee Hearings, 108th Congress (Event Date: 2/24/2004)

Preventing and Responding to Acts of Terrorism, CQ Committee Hearings, 108th Congress (Event Date: 4/14/2004)

Bioterrorism Detection and Response, CQ Committee Hearings, 108th Congress (Event Date: 5/11/2004)

Department of Justice: Terrorism Oversight, CQ Committee Hearings, 108th Congress (Event Date: 6/8/2004)

Terrorism Oversight: Department of Homeland Security, CQ Committee Hearings, 108th Congress (Event Date: 6/9/2004)

Tools To Fight Terrorism Act, CQ Committee Hearings, 108th Congress (Event Date: 9/13/2004)

Patriot Act Reauthorization: Section 805, CQ Committee Hearings, 109th Congress (Event Date: 4/20/2005)

Intelligence Information Sharing, CQ Committee Hearings, 109th Congress (Event Date: 9/21/2005)

Saudi Arabia and the War on Terror, CQ Committee Hearings, 109th Congress (Event Date: 11/8/2005)

SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

Financial Reconstruction in Iraq, CQ Committee Hearings, 108th Congress (Event Date: 9/16/2003)

Prevention of Terrorist Financing, CQ Committee Hearings, 108th Congress (Event Date: 9/25/2003)

Economic and Financial Reconstruction in Iraq, CQ Committee Hearings, 108th Congress (Event Date: 2/11/2004)

Terrorist Financing and Couterterror Initiatives, CQ Committee Hearings, 108th Congress (Event Date: 4/29/2004)

Terrorism Risk Insurance, CQ Committee Hearings, 108th Congress (Event Date: 5/18/2004)

Terror Financing and Money Laundering, CQ Committee Hearings, 108th Congress (Event Date: 9/28/2004)

Terror Financing in the Middle East, CQ Committee Hearings, 109th Congress (Event Date: 7/13/2005)

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

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

The assistant legislative clerk proceeded to call the roll.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

THE SUPERDOME

Ms. LANDRIEU. Mr. President, it is only 1:50 p.m. in New Orleans, but the bands have been marching since early this morning, and the singing is joyful. People have been so excited not only in New Orleans but in all of Louisiana because tonight the Saints will be marching again into that grand, wonderful building we call the Superdome.

The Superdome has always been a special symbol to New Orleans, but tonight that symbol takes on a new meaning. It has been a symbol of pride in the past, and tonight it is a symbol of hope—a symbol of hope for the great rebuilding of our wonderful city, region, and State.

Just a year ago, the Superdome was a symbol of sadness, loss, confusion, and despair as New Orleans, the region, and our State faced the worst natural disaster in the history of this country. It wasn't just Hurricanes Katrina and Rita that caused devastation, it was also the levees that collapsed and put a great city and region under some 20 to 25 feet of water. It was in that overwhelming flood that people fled to the Dome looking for safety and security. All of America knows this sad story.

But I am here to talk about a story of recovery, a story of leadership. I want to thank the people who made the Dome's reopening possible—to thank the men and women who work at the Dome: the welders, the janitors, the cleanup crews, the construction crews, the managers, the architects, and the engineers.

They spent the whole year rebuilding this Dome on a schedule that no one thought was possible, at a cost that came under budget. A partnership formed between the NFL, the State of Louisiana, and the Federal Emergency Management Agency to get this building back into shape and reopen tonight with 68,000 fans coming to watch the Saints play the Atlanta Falcons.

I want to remind the country that these employees showed up to work each day to restore the Dome, many of them traveling hours to get there in the morning and hours back in the evening because there were no nearby houses for them to sleep. Many of them lost their homes, their children lost their schools, and their churches were destroyed.

The successful rebuilding of the Dome is because of the people who showed up to work. Their journeys in the morning and their journeys home show a commitment to rebuilding a great city. Despite the criticism that the city, the State and the region have received, tonight is a symbol of all that is great about the spirit of the people who refuse to let this city die.

Desiree Jones, who lives in Violet, La., is the housekeeping manager for the Superdome. She started working at the Dome 25 years ago as a janitor. Every day for the past two weeks, she has been working to get the Dome ready for tonight. She knows the Dome's reopening is a signal of rebirth for our city.

I come to the floor to thank the thousands of men and women who worked on the Superdome. The were

led by a wonderful leader, a young man who has really shown his stripes and all of New Orleans is singing his praises: Doug Thornton, the general manager of the Dome. He stayed in the Superdome with his wife and children doing everything he could to help the evacuees. His heroic efforts during those harrowing days a year ago have been well reported. But what might not be known is that Doug and his wife also lost their home. He didn't see his wife for weeks because he spent his time rebuilding the Dome while Denise spent time rebuilding their house in Lakeview. That is what people all over New Orleans and South Louisiana and the Gulf Coast are doing—going to work to rebuild the refineries, the pipelines, the industries, while their spouses are at home rebuilding what is left of their houses.

Doug Thornton, general manager of the Superdome, is no exception. He deserves a tremendous amount of credit.

Tim Coulon, the chairman of the Louisiana Stadium Exhibition District, is a former Jefferson Parish president and a man I know well. Tim has always been a very quiet but competent and effective leader. His leadership doesn't come from loud speeches and pushing but from quiet determination. Tim, his staff, and other board members worked very closely with Governor Blanco, who signed executive order after executive order, to cut through the redtape and expedite the Superdome's rebuilding.

That partnership between our Governor, the stadium commissioners, and Doug Thornton was the leadership team that put this Superdome back together.

I also have to say for the record that Paul Tagliabue, former commissioner of the NFL, saw what happened at the Superdome and decided that the NFL was a service organization, and its first job was to service teams and the cities. He understands something about the emotional connection between the teams and the cities that host them. The teams become a part of the spirit of every city, and he would not allow the Saints' spirit to die.

He said the Saints will march again. He said the Dome will be rebuilt, and let's get to it. New Orleans will forever be grateful to Paul Tagliabue and his staff at the NFL for their belief in our city and for not cutting and running, not leaving when times got tough for us. They stood their ground, and we are very grateful.

I also want to go on the record to say that the Dome has been a symbol of our city for 31 years. Its origin goes back to Governor John McKeithen. He was not from New Orleans. He was actually a country boy from Columbia, LA. But as our Governor, he had a vision of what a great Dome could mean to a great American city, a great southern city. He, along with the mayor at that time, my father, Moon Landrieu, along with Dave Dixon, a local businessman, decided the Dome would mean renewal for the city. The three of them overcame all sorts of political hurdles and were able to build this great Dome.

We have hosted more Super Bowls than any building in America. It sits on 52 acres of land in the central business district. The Superdome has a seating capacity of over 70,000, depending on the event.

When Dave Dixon had a vision for this Dome, he told our Governor at the time: You know, Governor, we will have a Pope here one day and a President here one day.

Nobody believed him when he said that. But sure enough, President Reagan honored all of us when the Republican National Convention came to New Orleans 18 years ago.

It was a proud time for New Orleans and Louisiana when 19 years ago, Pope John Paul II made the first ever Papal visit to Louisiana and held a rally in front of 80,000 children in that Dome. It was a site to behold.

We have had a proud Superdome history right there on the corner of Poydras and Loyola, right across the street from city hall. It will be there for years to come because the heroic efforts of the employees at the Dome and our local contractors who put their shoulders to the wheel and their hearts into their work and decided that this would be a symbol of our rebirth.

I am proud as the Senator from the great State of Louisiana to come and honor them, to thank them, and to say that this is the beginning of our recovery. This week, we close a chapter on Hurricane Rita, which, Mr. President, hit your own State of Texas, and which did so much damage to both Louisiana and Texas. I visited Louisiana this past weekend with some of Louisiana's delegation and local leaders. It is clear that recovery has begun, but there is still a long way to go.

As we close the Rita and Katrina chapters of the last year, let the Saints go marching in tonight, and let them lead us to a new chapter of hope and recovery for New Orleans, for Louisiana, for the whole gulf coast, and for all of America.

I yield the floor.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from Alabama.

BORDER FENCING

Mr. SESSIONS. Mr. President, the House and Senate have a piece of legislation more commonly known as the Fence bill, but it is really a bill to establish operational control of our borders through fencing and other means. It includes authorization for 700 specific miles fencing along the Mexican border and a study of the situation on the northern border. It is designed to help multiply the capacity of American Border Patrol agents to be effective in creating a lawful border instead of the unlawful border we have.

It passed the House with a strong bipartisan vote. They have had five formal hearings on the matter and have considered information from previous hearings. They had a number of field hearings in August and they actually talked to people in the region to find out what is going on.

The House has sent the Senate a bill they have worked on for some time and to which they have given a great deal of thought. It is very similar to the bill we passed in the Senate which authorized 870 total miles of physical infrastructure at the border.

Let me take a moment to discussion the history of the legislation in this Senate dealing with barriers at the border. I will discuss why the barriers are an important component—not all of what we need to do, but an essential component of what we need to do—to create a lawful system of immigration. But first let us talk about the votes we have had in the Senate.

On May 17, I offered an amendment that mandated the construction of 370 miles of fencing and 500 miles of vehicle barriers along the southwest border of the United States. That is a total of 870 miles of physical barriers. This is not a lot different from what the House is sending the Senate, some 700 or so miles of fencing. When we voted on my amendment, we discussed it at some length.

I did not know how we would vote. I didn't know how the vote would turn out. A number of Members said they were for fencing; a number of Members said they were against fencing. I argued that good fences make good neighbors. It clarifies where property lines are, what your rights are, and neighbors can get along pretty well. Leave them ambiguous, and people get in fusses.

At any rate, when we voted, the vote was 83 to 16 to approve my amendment mandating construction of this fence. That was part of the overall immigration bill. That immigration bill was fatally flawed. The truth is, it is not going to become law. We can all be thankful for that.

This amendment, though, was voted on 83 to 16. A lot of our colleagues say, I voted for an amendment to build a fence; I voted as one of the 83. But, we all are grownups, we know that legislation containing that amendment is not going to become law. So, now it is time to either put up or shut up about enforcement. It is time to either be honest with our constituents and say, I am not going to vote for a stand alone fence bill, or, yes, I believe a fence is an important component of border security and I will vote for this bill because it takes the first step.

So where did the Senate go after the first vote of 83 to 13? I suggest that strong vote indicated border fencing and barriers are a high priority of this Senate. This was a strong bipartisan vote, if people were voting with integrity, to build a fence.

We had a second vote. One of the things that is unusual about the Senate, to people who are not used to it, is

a vote to authorize a matter—a subject, a fence—is not the end of it. Before that construction can take place, the Congress has to vote again to appropriate the money to build it. It takes two votes. One vote can be a signal, but it does not have any reality until a second vote is a fact.

When the Department of Homeland Security appropriations bill hit the Senate, we were more than a little disappointed that even though the original vote was 83 to 16, when we come along with the Department of Homeland appropriations bill, what did we see? Thirty-nine miles of vehicle barriers only. This was most discouraging.

I urged my colleagues, if they were serious about the previous vote, we ought to have a vote to actually fund it. I offered an amendment that would actually have funded this fence at $1.8 billion which we think if we get someone to run it as it ought to be run and build it in a cost-effective way, it would be enough to meet that standard. I offered that amendment on July 13. It would have reduced a percent or two of funding for other appropriations in the bill, an across-the-board reduction, and we voted on it. Unfortunately, only 29 Senators voted to actually appropriate the money to do what they had already voted to do.

That was very discouraging to me. I talked about it, particularly the fact that if there is one area where the American people are most cynical about Congress, it is about their protestations they are doing everything they can do to create a lawful system of immigration when they are actually not. They are very cynical about that. They have every right to be. The American people have understood this issue for 30 years. No President, no Congress, has listened to them and done what actually needs to be done and could be done to create a lawful system of immigration. This was most troubling.

So we continued to study what could be done to get fencing built. On August 2 the Defense bill was in the Senate. The National Guard had been deployed to the border and was making some progress, assisting those at the border—not as much as some would like and would hope, but it has made a positive step. They have the capability of building some fencing and actually were already working on some fencing projects. Again, I offered an amendment on the floor to actually fund the fencing, this time through the Defense Department, through the National Guard. The amendment would have let them either build the fencing themselves, or manage private contractors who would build a fence.

When we voted on that amendment, perhaps after my colleagues had spent some time talking to their constituents, the vote to authorize $1.8 billion for funding passed 93 to 3. So we got 93 to 3. Now we are cooking. We have money, we have actually put up money to follow through on the fencing idea. I was very happy about that.

In the course of the conference on the Defense appropriations legislation that we won the amendment vote on, I was informed they were moving $1.8 billion from the Department of Defense bill over to Homeland Security bill which was also in their conference because that was the more appropriate vehicle to put funding to build a fence for Homeland Security. So, I was told that the Homeland Security Appropriators would handle it.

Now we are hearing that less money for the fence is going to be included in the conference report, that was included in my amendment. There was an article in the paper today, one of the Web sites of the AP, saying they agreed to $1.2 billion instead of $1.8 billion. That is a 30-percent reduction. We voted to fund a $1.8 billion one-time expenditure to build miles of fence and barriers. It is something that ought to be done at one time and it will save money in great amounts over the long term.

I am worried about that reduction in funding. Some have said the numbers may even be worse than that because those in charge of the process feel an obligation to fund other things related to Homeland Security and they may not even appropriate the full $1.2 billion for fencing construction. I hope that is not so. I think that would be unacceptable. That would be inconsistent with the votes we have had and would not make Congress look good. It would not be the kind of action worthy of a Senate that is attempting to gain the respect of the American people on the subject of immigration, a subject about which they have lost the respect of the American people and deserve to get back.

So the House passed a bill. They passed an authorization bill that mandates the fencing, very similar to what the Senate voted for, and is now before the Senate. A filibuster was suggested, indicated by the several procedural votes we have had to have on this bill. The majority leader had to file for cloture on the motion to proceed. That gives 30 hours of debate. Then 30 hours later, we voted on the motion to proceed and we did not see the filibuster continue. The vote was 94 to 0 to proceed to the Secure Fence Act. It took a lot of time, not much debate. I was one of the few Members who spoke. The 30 hours slowed down everything we were doing.

The people are saying, I am for a vote, I voted for cloture. Why did we have to have cloture? Why couldn't we move straight to the bill as we do time and time again in this Senate—although less and less, as time has gone by. We are in a slowdown mode. We are moving along now. We will have a vote, I thought today, on cloture on the bill. However, it looks as though that may be tomorrow. Then we will have another 30 hours of debate. Then we will have an opportunity or complaints about how many amendments can be offered or fall. Who knows where this will go?

There are some Members who like to claim they support barriers at the border, but when the chips are down, through legerdemain in this body, manage to create logjams and headaches so it will never become law if it appears that is their wish. I suspect we will have people who say they want to add amendments on comprehensive reform, on amnesty, on agriculture jobs or other issues that would kill this amendment if adopted. They want to try to offer those amendments. Or they are complaining that virtual fencing, some sort of a satellite, unmanned aerial vehicle, can do the same thing as a fence. That is not so. It can be an asset, but it cannot replace individual people apprehending people coming across the border illegally—not a virtual fence. How silly is that? They will say they do not favor the locations where the fencing is or they will say they favor fencing, but they really favor comprehensive reform and if we pass anything such as fencing, even though the American people want it, then the American people will not pass their version of amnesty or whatever they want to see in the form of comprehensive reform.

They are afraid the American people will get what they want, and if the American people get what they want in terms of increased enforcement, they may not be so interested in their ideas about how to reach final settlement on amnesty.

We will have two real votes on fencing this week: cloture on the underlying bill and final passage. We should be able to achieve cloture and final passage. It takes 60 votes, but we have had 80, 90 votes on this before. Without this authorization language, there will be no mandate that the fencing act will be constructed or in what manner it will be constructed.

So these votes are the real test this week—not the final test, but very critical steps in the process. The American people will want to watch and see if they agree with their Senators in how they vote. I note we will also have to have some more votes somewhere along the line that are also critical that deal with actual funding of the border barriers.

I see my colleague from Oklahoma is in the Chamber, my distinguished colleague on the Armed Services Committee, who chairs the Environment and Public Works Committee. I ask my colleague, do you have a time agreement to speak? What is your schedule?

Mr. INHOFE. Mr. President, I am going to be requesting unanimous consent to be recognized for up to 1 hour.

Mr. SESSIONS. All right. I will wrap up and be pleased to yield to the Senator. The Senator is going to ask unanimous consent to be recognized after I finish?

Mr. INHOFE. After the Senator concludes, yes.

Mr. SESSIONS. Mr. President, I will continue a couple more minutes.

Fencing works. We have a major problem. Last year, our Border Patrol

agents apprehended 1.12 million people along our border coming into our country unlawfully. Can you imagine that? Where we did build fencing along the San Diego border—only 14 miles, but it was one of the worst areas—that area was tremendously improved. Crime went down, drug dealing went down, violence went down, illegal immigration plummeted and property values went up.

But we have 1,800 miles along the border. This bill would not provide funding and authorization but for fencing about one-third of that distance.

I will share with my colleagues some of the debate in the House of Representatives recently, as they passed the very bill that is before us. Chairman ROYCE—he is from California—who chairs the International Terrorism and Nonproliferation Subcommittee talked about the difficulties they have had with a breach, a gap in the border fencing. He said this: It is called ''smugglers' gulch,'' a fence that runs from the foothills to the ocean through that small 3-mile breach. It has taken 8½ years to get the California Coastal Commission to go along with closing that fence in consultation—8½ years to get it done.

He talked about the problem of that gap. And he talked about the field hearings he had participated in. He said: We heard from witnesses, and we heard them express that border fencing was very effective. He quoted Darryl Griffen, who is the chief agent in San Diego for the Border Patrol—the chief agent. Mr. Griffen, referring to the fencing, said this: It is a great force multiplier. It expands our enforcement capacity. It allows us the discretion to redeploy agents to areas of vulnerability or risk. It is one component that certainly has been integral to everything we have accomplished here raising the level of security.

That is what the chief of the Border Patrol for San Diego said. So people will tell you fencing makes no difference, it is not important, it does not help. It is not so. Listen to the professionals. I know President Bush has been reluctant to support fencing, but this man works for President Bush. He testified, as has Secretary Chertoff, about the subject. Secretary of Homeland Security Chertoff supports the fence, the bill that we passed in the Senate. Indeed, it was passed on his recommendation, the details of it were.

Then Chairman ROYCE, in the House, who chairs the International Terrorism Subcommittee, said this about the dangerous people who are coming across the border: So we see people coming over the border illegally from Afghanistan, Angola, Jordan, Qatar, Pakistan, Yemen. And I will give you one example. Mohammed Karani is the brother of a commander of Hezbollah in south Lebanon. He came over the border in my State in the trunk of a car. He paid a coyote to get him across the border. He was later arrested in Dearborn, Michigan. He is serving 4½ years. He is a member of Hezbollah. He was in the process of securing funds and resources for Hezbollah in the United States.

He then goes on to say: Two border Governors have declared states of emergency over illegal immigration. Then one of the agents told him a personal story of stopping a man who had been trained in an Afghan training camp originally from Uzbekistan. This man injured the Border Patrol agent, actually bit his arm as he was trying to take him down. This agent told Chairman ROYCE one of his concerns was this was the second time the man had tried to come into the country after 9/11.

So I would say we are dealing with an important issue. I am glad to see from previous votes that the Senate is coming around to a uniform position on it. It is time for us now, as we wind up this session, to fulfill our obligation for actually making a law, legislation to authorize the building of the fence, and then, in the few days we have left, to come forward with legislation that will actually fund this requirement we authorize. Otherwise, we risk going home and even further arousing cynicism and irritation among the voters who have sent us here.

I believe we can get it done. I think we are moving in the right direction. I am optimistic. But there will be some around here who would like to see it fail in the last minute. Let's don't let that happen. Let's follow through, and let's be consistent with the wishes of the American people and the security of the United States.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized for 1 hour in morning business.

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

Mr. INHOFE. Mr. President, let me first say to my friend from Alabama that as to the last comment he made about whether at the last minute someone may come along and try to torpedo this, I suspect that might be the case. It is like when I had the amendment to make English our national language—and 89 percent of the American people were for it; 70 percent of the Hispanics were for it—and yet some of the liberals in this Chamber were catering to La Raza, an extremist group, in trying to torpedo what we are doing, and merely doing what 51 other countries have done, making English the official language.

I also want to say to my friend from Alabama, I have never been prouder to serve on the Armed Services Committee with any member more than I am to serve with him. It was you and seven other of the Republicans who tried from the very beginning to give the President everything he needed to interrogate these people, to prosecute these people, and to get as much human intelligence as possible to save American lives. I thank the Senator publicly for standing up as one of all nine of us.

Mr. SESSIONS. Mr. President, if the Senator will yield, I think the Senator has provided great leadership on security on a number of issues. You may be talking about other issues as we go forward right now, but I know the Senator would agree that our borders do represent vulnerabilities, and fixing our borders is also an aspect of national security, as I read of Hezbollah people coming across and others who have dangerous reputations.

I also thank the Senator for his steadfast leadership and his clear thinking in regard to the fundamental issue that barriers do represent a critical part of what we need to do to have a lawful border.

Mr. INHOFE. Mr. President, I thank the Senator from Alabama. And I think we will prevail. As to what you are suggesting, and what you have been suggesting over the last few minutes, the vast majority of the American people are on our side. They know as to people who say: You cannot secure our border, fences will not work—they worked for a long time up in between North Korea and South Korea. I think they will work down here, too.

CLIMATE CHANGE

Mr. INHOFE. Mr. President, I rise to speak today about the most media-hyped environmental issue of all time. It is the word that gets everybody upset when you say it and the word or the phrase that many politicians are afraid to say, and that is ''global warming.'' I have spoken more about global warming than any other politician in Washington today. My speech will be a bit different from the previous seven floor speeches I have made on this subject, as I focus not only on the science, as I have many times before, but on the media's coverage of climate change.

Global warming—just the term—evokes many Members in this Chamber, the media, Hollywood elites, and our pop culture to nod their heads and fret about an impending climate disaster. As the Senator who has spent more time educating about the actual facts about global warming, I will address some of the recent media coverage of global warming and Hollywood's involvement in this issue. And, of course, I will also discuss former Vice President Al Gore's movie, ''An Inconvenient Truth.''

Let's keep in mind, I do chair the committee in the Senate called Environment and Public Works, the committee that has jurisdiction. I recall so well when I first became chairman of this committee, almost 4 years ago, I was actually a believer that because I had heard it so many times there must be something to this thing, until I started looking at the science. But I have talked about that before.

Since 1895, the media has alternated between global cooling and global

warming scares during four separate and sometimes overlapping time periods. From 1895 until the 1930s, the media peddled a coming ice age. From the late 1920s until the 1960s, they warned of global warming. From the 1950s until the 1970s, they warned us again of a coming ice age. This makes modern global warming the fourth estate's fourth attempt to promote opposing climate change fears during the last 100 years—4 times during the last 100 years—and every time just as hysterical as the time before.

Recently, advocates of alarmism have grown increasingly desperate to try to convince the public that global warming is the greatest moral issue of our generation. Just last week, the vice president of London's Royal Society sent a chilling letter to the media encouraging them to stifle the voices of scientists skeptical of climate alarmism.

During the past year, the American people have been served up an unprecedented parade of environmental alarmism by the media and entertainment industry, which links every possible weather event to global warming. The year 2006 saw many major organs of the media dismiss any pretense of balance and objectivity on climate change coverage and instead crossed squarely on into global warming advocacy.

First, I will summarize some of the recent developments in the controversy over whether humans have created a climate catastrophe. One of the key aspects the United Nations, environmental groups, and the media have promoted as the ''smoking gun'' of proof of catastrophic global warming is the so-called hockey stick temperature graph by climate scientist Michael Mann from Virginia and some of his liberal colleagues.

This graph purported to show that temperatures in the northern hemisphere remained relatively stable over 900 years, and then spiked upward as we moved into the 20th century. And that spike would be the ''blade'' on the hockey stick. They say this was due to human activity. Mann, who also copublishes a global warming propaganda blog—reportedly set up with the help of an environmental group—had his hockey stick come under severe scrutiny.

The hockey stick was completely and thoroughly broken once and for all in 2006. Several years ago, two Canadian researchers tore apart the statistical foundation for the hockey stick. In 2006, both the National Academy of Sciences and an independent researcher further refuted the foundation of the hockey stick.

The National Academy of Sciences report reaffirmed the existence of the Medieval Warming Period. That was from about 900 AD to 1300 AD, and the Little Ice Age from about 1500 to approximately 1850. Both of these periods occurred long before the invention of the SUV or human industrial activity and it could not have possibly impacted the Earth's climate. In fact, scientists believe the Earth was warmer than today during the Medieval Warming Period, when the Vikings grew crops in Greenland. We all remember reading about that. That was a period of time when the Vikings, all of a sudden, because it became warmer back around 1000 AD, started inhabiting Greenland. They flourished up there, until the Little Ice Age came along in 1500, and most of them died at that time. Now the climate alarmists have attempted to erase the inconvenient Medieval Warming Period from the Earth's climate history for at least a decade.

David Demming, an assistant professor at the University of Oklahoma's College of Geosciences, can testify firsthand about this effort. Dr. Demming was welcomed into the closeknit group of global warming believers after he published a paper in 1995 that noted some warming in the 20th century. He says he was subsequently contacted by a prominent global warming alarmist and told point blank:

> We have to get rid of the medieval warming period.

When the ''hockey stick'' first appeared in 1998, it did exactly that. This guy, Michael Mann, turned around and ignored the fact that we had this medieval warming period and then went into the little ice age, which changed it.

The media has missed big pieces of the puzzle when it comes to the Earth's temperatures and mankind's carbon dioxide, CO_2, emissions. It is very simplistic to feign horror and say the 1-degree Fahrenheit temperature increase in the 20th century means we are all doomed. First of all, the 1-degree Fahrenheit rise coincided with the greatest advancement in living standards, life expectancy, food production, and human health in the history of our planet. So it is hard to argue that the global warming we experienced in the 20th century was somehow negative or part of a catastrophic trend.

Here on the chart you can see during this period of time, when things were flourishing and they went down, it was far more prosperous during the medieval part.

Second, what the climate alarmists and their advocates in the media have continued to ignore is the fact that the little ice age, which resulted in harsh winters which froze New York Harbor and caused untold deaths, ended about 1850. So trying to prove manmade global warming by comparing the well-known fact that today's temperatures are warmer than during the little ice age is like comparing summer to winter to show a catastrophic temperature trend.

In addition, something that the media almost never addresses are the holes in the theory that CO_2 has been the driving force in global warming.

The alarmists fail to adequately explain why temperatures began warming at the end of the little ice age in about 1850, long before manmade CO_2 emissions could have impacted the climate. Then in about 1940, just as manmade CO_2 emissions rose sharply—about 80 percent, with the largest increase in the middle of the 1940s—the temperatures began a decline, and that lasted until about the 1970s, prompting the media and many scientists to fear a coming ice age.

I am saying that this increase in CO_2 emissions did not precipitate a warming period; it precipitated a cooling period.

If CO_2 is the driving force of the global climate change, why do so many in the media ignore the many skeptical scientists who cite these rather obvious inconvenient truths?

My skeptical views on manmade catastrophic global warming have only strengthened as new science comes in. There have been recent findings in peer-reviewed literature over the past few years showing that the Antarctic is getting colder, and ice is growing. And a new study in Geophysical Research Letters found that the Sun was responsible for 50 percent of the 20th century warming. Now, that is shocking: the Sun is responsible for warmth.

Recently, many scientists, including a leading member of the Russian Academy of Sciences, predicted long-term global cooling may be on the horizon due to a projected decrease in the Sun's output. It is going to start getting cooler again.

A letter that was sent to the Canadian Prime Minister on April 6 of this year by 60 prominent scientists who question the basis for climate alarmism, clearly explains the current state of the scientific knowledge on global warming. Keep in mind, these 60 scientists were the ones who recommended back in the 1990s that Canada sign onto the Kyoto Treaty. They wrote this to Prime Minister Harper:

> If, back in the mid-1990s, we knew what we know today about climate, Kyoto would almost certainly not exist, because we would have concluded that it was not necessary.

The letter also noted:

> ''Climate change is real'' is a meaningless phase used repeatedly by activists to convince the public that a climate catastrophe is looming and humanity is the cause. Neither of these fears is justified. Global climate changes occur all the time due to natural causes, and the human impact still remains impossible to distinguish from the natural ''noise.''

These are scientists talking. People realize that these cycles go on. God is still up there, and we have the cycles every 1,500 years or so. Every time this happens, alarmists get this out and say we are all going to die.

One of the ways alarmists have pounded the mantra of a ''consensus'' on global warming into our pop culture is through the use of computer models that project future calamity. But the science is not there to place so much faith in scary computer model scenarios which extrapolate the current and projected buildup of greenhouse gases in the atmosphere and conclude that the planet faces certain doom.

Dr. Vincent Gray, a research scientist and a 2001 reviewer with the U.N. Intergovernmental Panel—they started like most bad things do, with the U.N. Back in the 1990s they came out with the Intergovernmental Panel on Climate Change, and Dr. Gray said:

The effects of aerosols, and their uncertainties, are such as to nullify completely the reliability of any of the climate models.

Earlier this year, the director of the International Arctic Research Center in Fairbanks, AK, testified to Congress that highly publicized climate models showing a disappearing Arctic were nothing more than ''science fiction.''

That is not Senator INHOFE talking. That is the director of the International Arctic Research Center in Fairbanks, who ought to know a little bit about the Arctic.

In fact, after years of hearing about the computer-generated scary scenarios about the future of our planet, I now believe that the greatest climate threat we face may be coming from alarmist computer models.

This threat is originating from the software installed on hard drives of the publicity-seeking climate modelers. It is long past time for us to separate climate change fact from hysteria.

One final point—and there are many. We have made seven talks, averaging about an hour apiece, about the flawed science. One final point about the science: I am approached by many in the media and others who ask: What if you are wrong, INHOFE, to doubt the dire global warming predictions? Will you be able to live with yourself for opposing the Kyoto Protocol?

My answer is blunt. The history of the modern environmental movement is chock full of predictions of doom that never came true. We have all heard the dire predictions about the threat of overpopulation, resource scarcity, mass starvation, and the projected death of our oceans. None of them came true. Yet it never stopped the doomsayers from predicting a dire environmental future.

The more the eco-doomsayers' predictions fail, the more the eco-doomsayers predict. These failed predictions are just one reason I respect the serious scientists out there today debunking the latest scare mongering on climate change: scientists such as MIT's Richard Lindzen; former Colorado State climatologist, Roger Pielke, Sr.; the University of Alabama's Roy Spencer and John Christy; Virginia State climatologist Patrick Michaels; Colorado State University's William Gray; atmospheric physicist, S. Fred Singer; Willie Soon of the Harvard-Smithsonian Center for Astrophysics; Oregon State climatologist George Taylor; astrophysicist Sallie Baliunas, to name a few.

You never hear about these well-established scientists.

More important, it is the global warming alarmists who should ask the question: What if they are correct about manmade catastrophic global warming? They have come up with no meaningful solution to their supposed climate crisis in the two decades they have been hyping this issue.

If the alarmists truly believe that manmade greenhouse gas emissions are dooming the planet, then they must face up to the fact that symbolism does not solve a supposed climate crisis.

It is long past time for them to separate symbolism from fact. Let me show you this. This is a chart I used on the floor before. A very prominent Senator from the Northeast who bought into this hoax called global warming—after he researched this chart, found it was true. This chart says in the event that everything is true that they have said about global warming, and if all of the countries—I am talking about the developing nations, as well as the developed nations—adhere to or achieve Kyoto goals, this is the difference it would make by 2050. It is not even measurable.

A final point on the science of climate change. Again, I am approached by many in the media and others who ask what if you are wrong? I think the answer is that they have been wrong all along.

The alarmists freely concede that the Kyoto Protocol, even if fully ratified and complied with, would not have any meaningful impact on global temperatures. Keep in mind that Kyoto is not even close to being complied with by many of the ratifying nations. Fifteen European nations ratified the Kyoto Protocol, and 13 have not made their goals. So they are not going to be able to do it.

Many of the nations that ratified Kyoto are now realizing what I have been saying all along: The Kyoto Protocol is a lot of economic pain for no climate gain.

Legislation that has been proposed in this Chamber would have even less of a temperature effect than Kyoto's undetectable impact. And more recently, global warming alarmists and the media have been praising California for taking action to limit CO_2. But here again this costly, feel-good, California measure, which is actually far less severe than Kyoto, will have no impact on the climate, only the economy.

Symbolism does not solve a climate crisis.

In addition, we now have many environmentalists and Hollywood celebrities, such as Laurie David, who have been advocating measures like changing standard light bulbs in your home to fluorescents to help avert global warming. Changing to more energy-efficient light bulbs is fine, but to somehow imply that we can avert a climate disaster by these actions is absurd.

Once again, symbolism does not solve a climate crisis. But this symbolism may be hiding a dark side. While greenhouse gas limiting proposals may cost the industrialized West trillions of dollars, it is the effect on the developing world's poor that is being lost in this debate.

The Kyoto Protocol's post-2012 agenda, which mandates that the developing world be subjected to restrictions on greenhouse gases, could have the potential to severely restrict development in regions such as Africa, Asia, and South America, where some of the Earth's most energy-deprived people currently reside.

Expanding basic necessities like running water and electricity in the developing world are seen by many in the Green Movement as a threat to the planet's health that must be avoided.

Energy poverty equals a life of backbreaking poverty and premature death.

If we allow scientifically unfounded fears of global warming to influence policymakers to restrict future energy production and the creation of basic infrastructure in the developing world, billions of people will continue to suffer.

Last week, my committee heard testimony from Danish statistician Bjorn Lomborg, who was once a committed leftwing environmentalist until he realized that so much of what that the movement preached was based on bad science. Lomborg wrote a book called ''The Skeptical Environmentalist'' and has organized some of the world's top Nobel laureates to form the 2004 ''Copenhagen Consensus,'' which ranked the world's most pressing problems.

Guess what. They place global warming at the bottom of the list in terms of our planet's priorities. The ''Copenhagen Consensus'' found that the most important priorities for our planet include combating disease, stopping malaria, securing clean water, and building infrastructure to help lift the developing nations out of poverty.

I have made a lot of trips to Africa. A lot of people know I have had a mission there for well over 10 years now. Once you see the devastating poverty—we think we have poverty in this country. Well, if you saw their poverty and the kids running through the junk piles and rats biting at the heels of their bloody feet, you would realize that these fears about global warming are severely misguided.

I firmly believe that when the history of our era is written, future generations will look back with puzzlement and wonder why we spent so much time and effort on global warming fears and pointless solutions, such as the Kyoto protocol.

One of your favorite Frenchmen, Mr. President, Jacques Chirac, the French President, provided the key clue as to why so many in the international community still revere the Kyoto Protocol, when in 2000 he said Kyoto represents not climate change but represents ''the first component of an authentic global governance.''

Furthermore, if your goal is to limit CO_2 emissions, the only effective way to go about it is the use of cleaner, more effective technologies that will meet the energy demands of this century and beyond.

The Bush administration and my Environment and Public Works Committee—the committee I chair—have been engaged in these efforts as we work to expand nuclear power and promote the Asian-Pacific Partnership. This partnership stresses the sharing of new technology among member nations, including three of the world's top 10 emitters—China, India, and Korea—all of whom are exempt from Kyoto.

Keep in mind, even if all these charts were true and everyone is going to comply with this, we passed in this Chamber just a very short while ago, by a unanimous vote, 96 to 0, legislation that said if you come back with any kind of treaty where we are going to treat developing nations differently from developed nations, we are going to oppose it. So it is unanimously opposed.

Many in the media, as I noted earlier, have taken it upon themselves to drop all pretense of balance on global warming and have instead become committed advocates for the issue.

Here is a quote from Newsweek. You have to listen to this, Mr. President. This is very important. I am going to quiz you later. This is a quote from Newsweek magazine:

There are numerous signs that the Earth's weather patterns have begun to change dramatically and that these changes may portend a drastic decline in food production—with serious political implications for just about every nation on Earth.

A headline in the New York Times reads:

Climate Changes Endanger World's Food Output.

Here is another quote from Time magazine:

As they review the bizarre and unpredictable weather pattern of the past several years, a growing number of scientists are beginning to suspect that many seemingly contradictory meteorological fluctuations are actually part of a global climate upheaval.

All this sounds very ominous. That is until one realizes that the three quotes I just read are from articles in 1975 editions of Newsweek magazine and the New York Times, and Time magazine in 1974. They were not referring to global warming; they were warning of a coming ice age. The same people who were hysterical back then are using the same words to describe what is happening today.

Let me repeat: All three of those quotes were published in the 1970s warning of a coming ice age. An ice age is coming; we are all going to die.

In addition to global cooling fears, Time magazine has also reported on global warming. Here is an example:

[Those] who claim that winters were harder when they were boys are quite right . . . weathermen have no doubt that the world at least for the time being is growing warmer.

Before one thinks that this is just another example of the media promoting former Vice President Gore's movie, one needs to know that the quote I just read is from Time magazine and not a recent quote. It is from January 22, 1939. Yes, in 1939—9 years before former Vice President Gore was born and over three decades before Time magazine began hyping a coming ice age, and almost five decades before they returned to hyping global warming.

Time magazine, in 1951, pointed to receding permafrost in Russia as proof that the planet was warming.

In 1952, the New York Times noted that the ''trump card'' of global warming ''has been the melting glaciers.''

But the media could not decide between warming or cooling scares. There are many more examples of the media and scientists flip-flopping between warming and cooling scares. They don't really care. They just want to scare you. They want to make sure you are scared, and then they are satisfied.

Here is a quote from the New York Times on fears of an approaching ice age:

Geologists Think the World May be Frozen Up Again.

That sentence appeared over 100 years ago in the February 24, 1895, edition of the New York Times. Let me repeat, 1895, not 1995.

A front-page article in the October 7, 1912, New York Times, just a few months after the Titanic struck an iceberg and sank, declared that a prominent professor ''Warns Us of an Encroaching Ice Age.''

The very same day in 1912, the Los Angeles Times ran an article warning that the ''human race will have to fight for its existence against the cold.''

An August 10, 1923, Washington Post article declared:

Ice Age Coming Here.

By the 1930s, the media took a break from reporting on the coming ice age and instead switched gears to promoting global warming. This is the 1930s:

America in Longest Warm Spell Since 1776; Temperature Line Records a 25-year Rise.

That was in an article in the New York Times on March 27, 1933.

The media of yesteryear was also not above injecting large amounts of fear and alarmism into their climate articles.

An August 9, 1923, front-page article in the Chicago Tribune declared:

Scientist Says Arctic Ice Will Wipe Out Canada.

The article quoted a Yale University professor who predicted that large parts of Europe and Asia would be ''wiped out'' and Switzerland would be ''entirely obliterated.''

A December 29, 1974, New York Times article on global cooling reported that climatologists believed ''the facts of the present climate change are such that the most optimistic experts would assign near certainty to major crop failure in a decade.''

The article also warned that unless Government officials reacted to the coming catastrophe ''mass deaths by starvation and probably in anarchy and violence'' would result. In 1975, the New York Times reported that ''a major cooling [was] widely considered to be inevitable.''

These past predictions of doom have a familiar ring, don't they? They sound strikingly similar to our modern media promotion of the former Vice President's brand of climate alarmism, an alarmism he believes will put him back in the White House.

After more than a century of alternating between global cooling and warming, one would think that this media history would serve a cautionary tale for today's voices in the media and scientific community who are promoting yet another round of eco-doom.

Much of the 100-year media history on climate change that I have documented today can be found in a publication entitled ''Fire and Ice'' from the Business and Media Institute.

Which raises the question: How has this embarrassing 100-year documented legacy of coverage on what turned out to be trendy climate science theories made the media more skeptical of today's sensational promoters of global warming? You be the judge.

On February 19 of this year, CBS News's ''60 Minutes'' produced a segment on the North Pole. The segment was a completely one-sided report alleging rapid and unprecedented melting at the polar cap. It even featured correspondent Scott Pelley claiming that the ice in Greenland was melting so fast that he barely got off an iceberg before it collapsed into the water.

Mr. President, ''60 Minutes'' failed to inform its viewers that a 2005 study by a scientist named Ola Johannessen and his colleagues showed that the interior of Greenland is gaining ice mass and that, according to scientists, the Arctic was warmer in the 1930s than it is today. If you see this film, they will say it is the warmest it has ever been. It is just not true.

By the way, around the edges of ice caps there is a phenomenon known as calving. So when it becomes thicker in the middle, it melts a little on the outside, but the overall volume density increases.

On March 19 of this year, ''60 Minutes'' profiled NASA scientists and alarmist James Hansen who was once again making allegations of being censored by the Bush administration. In this segment, objectivity and balance were again tossed aside in favor of a one-sided glowing profile of Hansen.

The ''60 Minutes'' segment made no mention of Hansen's partisan ties to former Democratic Vice President Al Gore or Hansen's receiving of a grant of a quarter of a million dollars from the leftwing Heinz Foundation run by Teresa Heinz Kerry. I guess she is Teresa Heinz now. There was also no mention of Hansen's subsequent endorsement of her husband JOHN KERRY for the presidency in 2004. He is a political activist. This was never mentioned in the ''60 Minutes'' segment.

Many in the media dwell on any industry support given to so-called climate skeptics, but the same media completely failed to note Hansen's huge grant from the leftwing Heinz Foundation.

The foundation's money originated from the Heinz family ketchup fortune. So it appears that the media makes a distinction between oil money and ketchup money.

Mr. President, ''60 Minutes'' also did not inform viewers that Hansen appeared to concede in a 2003 issue of ''Natural Science'' that the use of ''extreme scenarios'' to dramatize climate change ''may have been appropriate one time'' to drive the public's attention on the issue. In other words, it is all right to lie in order to drive the public's attention to an issue that you want them to have and to that opinion.

Why would ''60 Minutes'' ignore the basic tenets of journalism that call for objectivity and balance in sourcing and do such one-sided segments?

The answer was provided by correspondent Scott Pelley. Pelley told the CBS News Web site that he justified excluding scientists skeptical of global warming alarmism from his segments because he considers skeptics to be the equivalent of ''Holocaust deniers.''

This year also saw a New York Times reporter write a children's book entitled ''The North Pole Was Here.'' The author of the book, New York Times reporter Andrew Revkin, wrote that it may someday be ''easier to sail to than stand on'' the North Pole in summer. So here we have a very prominent environmental reporter for the New York Times who is promoting the aspect of global warming alarmism in a book aimed at our kids.

In April of this year, Time magazine devoted an issue to global warming alarmism entitled ''Be Afraid, Be Very Afraid.'' This is the same Time magazine which first warned of a coming ice age in the 1920s before it switched to warning about global warming in the 1930s, before it switched again to promoting the 1970s coming ice age scare. The April 3, 2006, global warming special report of Time magazine was a prime example of the media's shortcomings, as the magazine cited partisan leftwing environmental groups with a vested financial interest in hyping alarmism.

Headlines blared: ''More and More Land is Being Devastated by Drought.''

''Earth is at the Tipping Point.''

''The Climate is Crashing.''

Time magazine did not make the slightest attempt to balance its reporting with any views of scientists skeptical of this alleged climate disaster.

I don't have journalism training, but I daresay calling a bunch of environmental groups with an obvious fundraising agenda and asking them to make wild speculations on how bad global warming might become is nothing more than advocacy for leftwing causes. It is a violation of basic journalistic standards.

To his credit, New York Times reporter Revkin saw fit to criticize Time magazine for its embarrassing coverage of climate science.

So in the end, Time's cover story title of ''Be Worried, Be Very Worried'' appears to have been apt. The American people should be worried—they should be very worried—of such shoddy journalism.

As to Al Gore's inconvenient truth, in May, our Nation was exposed to perhaps one of the slickest science propaganda films of all time. Former Vice President Gore's ''An Inconvenient Truth,'' in addition to having the backing of Paramount Pictures to market this film, had the full backing of the media, and leading the cheerleading charge was none other than the Associated Press, and of course they had the elitists, from Hollywood.

On June 27, the Associated Press ran an article by Seth Borenstein that boldly declared:

''Scientists give two thumbs up to Gore's movie.''

The article quoted only five scientists—two thumbs up, five scientists. They were praising Gore's science, despite the Associated Press having contacted over 100 scientists.

The fact that over 80 percent of the scientists contacted by the AP had not even seen the movie or that many scientists have harshly criticized the science presented by Gore did not dissuade the news outlet one bit from its mission to promote Gore's brand of climate alarmism.

Let's keep in mind, they said it is thumbs up, 100 percent of the scientists, and it was only 5 out of the 100.

I am almost at a loss as to how to begin to address the series of errors, misleading science, and unfounded speculation that appear in the former Vice President's film and in his book of the same name.

Here is what Richard Lindzen, a meteorologist from MIT, has written about ''An Inconvenient Truth.'' He is talking about Al Gore and his movie. This is a scientist, Richard Lindzen, a meteorologist from MIT:

A general characteristic of Mr. Gore's approach is to ignore the fact that the Earth and its climate are dynamic; they are always changing even without any external forcing. To treat all change as something to fear is bad enough; to do so in order to exploit that fear is much worse.

That is exactly what Al Gore is doing.

What follows is a brief summary of the science the former Vice President promotes in either a wrong or misleading way:

He promoted the now debunked ''hockey stick'' temperature chart in an attempt to prove man's overwhelming impact on the climate.

He attempted to minimize the significance of the medieval warm period and the little ice age.

He insists on a link between increased hurricane activity and global warming that most scientists believe does not exist.

He asserted that today's Arctic is experiencing unprecedented warmth while ignoring that temperatures in the 1930s were as warm or warmer than they are today.

He claimed the Antarctic is warming and losing ice but failed to note that is only true of a small region and the vast bulk has been cooling and gaining ice. This is the Antarctic.

He hyped unfounded fears that Greenland's ice is in danger of disappearing.

He erroneously claimed that the icecap on Mount Kilimanjaro is disappearing because of global warming, even while the region cools and researchers blame ice loss on local land-use practices. What they are talking about here is they had deforested the area down below. That was the reason. It had nothing to do with CO_2, obviously.

He made assertions of massive future sea level rise that is way outside of any supposed scientific consensus and is not supported in even the most alarmist literature.

He incorrectly implied that a Peruvian glacier's retreat is due to global warming, while ignoring the fact that the region has been cooling since the 1930s and other glaciers in South America are advancing.

He blamed global warming for water loss in Africa's Lake Chad despite NASA scientists concluding that local population and grazing factors are the more likely culprits.

He inaccurately claimed polar bears are drowning in significant numbers due to melting ice when in fact they are thriving.

He completely failed to inform viewers that the 48 scientists who accused President Bush of distorting science were part of a political advocacy group set up to support the Democratic Presidential candidate John Kerry in 2004.

That was just a brief sampling of some of the errors presented in ''An Inconvenient Truth.'' Imagine how long the list would have been if I had actually seen the movie. There wouldn't be enough time to deliver the speech today.

So along comes Tom Brokaw. Following the promotion of ''An Inconvenient Truth,'' the press did not miss a beat in their role as advocates for global warming fears.

ABC News put forth its best effort to secure its standing as an advocate for climate alarmism when the network put out a call for people to submit their anecdotal global warming horror stories in June for use in a future news segment.

In July, the Discovery Channel presented a documentary on global warming narrated by former NBC anchor Tom Brokaw. The program presented only those views of scientists promoting the idea that humans are destroying the Earth's climate. You don't have to take my word for the program's overwhelming bias. A Bloomberg TV news review noted:

''You'll find more dissent at a North Korean political rally than in this program'' because of its lack of scientific objectivity.

Brokaw also presented climate alarmist James Hansen to viewers as unbiased, failing to note his quarter-million-dollar grant from the partisan Heinz Foundation or his endorsement of Democratic Presidential nominee John Kerry in 2004 and his role promoting former Vice President Gore's Hollywood movie. Brokaw, however, did find time to impugn the motives of scientists skeptical of climate alarmism when he featured paid environmental partisan Michael Oppenhimer, of the group Environmental Defense, accusing skeptics of being bought out by fossil fuel interests.

The fact remains that political campaign funding by environmental groups to promote climate and environmental alarmism dwarfs spending by the fossil fuel industry by 3 to 1. Environmental special interests, through their 527s, spent over $19 million compared to $7 million spent by the oil and gas industry through political action committees in the 2004 election cycle.

I am reminded of a question the media often asks me about how much I have received in campaign contributions from the fossil fuel industry. My unapologetic answer is always: Not enough, especially when you consider the millions partisan environmental groups pour into political campaigns.

Continuing with our media analysis: On July 24, 2006, the Los Angeles Times featured an op-ed by Naomi Oreskes, a social scientist at the University of California, San Diego, and the author of a 2004 Science magazine study. Oreskes insisted that a review of 928 scientific papers showed there was 100 percent consensus that global warming was not caused by natural climate variations. This study was also featured in former Vice President Al Gore's ''An Inconvenient Truth.''

However, the analysis in Science magazine excluded nearly 11,000 studies or more than 90 percent of the papers dealing with global warming, according to a critique by British social scientist Benny Peiser. Peiser also pointed out that less than 2 percent of the climate studies in the survey actually endorsed the so-called ''consensus view'' that human activity is driving global warming and some of the studies actually opposed that view. Oreskes called 2 percent, 100 percent. But despite this manufactured ''consensus,'' the media continued to ignore any attempt to question the orthodoxy of climate alarmism.

As the dog days of August rolled in, the American people were once again hit with more hot hype regarding global warming, this time from the New York Times op-ed pages. A columnist penned an August 3 column filled with so many inaccuracies it is a wonder the editor of the Times saw fit to publish it. For instance, Bob Herbert's column made dubious claims about polar bears, the snows of Kilimanjaro, and he attempted to link this past summer's heat wave in the United States to global warming—something even the alarmist James Hansen does not support.

Finally, a September 15, 2006, Reuters News article claimed that polar bears in the Arctic are threatened with extinction by global warming. The article by correspondent Alister Doyle quoted a visitor to the Arctic—now listen to this, Mr. President—a visitor to the Arctic who claimed he saw two distressed polar bears. According to the Reuters article, the man noted that one of the polar bears looked to be dead and the other one looked to be exhausted. The article did not state the bears were actually dead or exhausted, they merely looked that way. Have we really arrived at the point where major news outlets in the United States are reduced to analyzing whether polar bears in the Arctic appear restful? How reporting such as this gets approved for publication by the editors at Reuters, I don't know. What happened to covering the hard science in this issue?

What was missing from the Reuters News article was the fact that according to biologists who study animals, polar bears are doing quite well. Biologist Dr. Mitchell Taylor from the Arctic government of Nunavut, which is a territory of Canada, refuted these claims in May when he noted that—this is a quote. Keep in mind I am quoting the biologist Dr. Mitchell Taylor from the Arctic government. He said:

> Of the 13 populations of polar bears in Canada, 11 are stable or increasing in number. They are not going extinct, or even appear to be affected at present.

Sadly, it appears that reporting anecdotes and hearsay is now fast replacing the tenets of journalism for many media outlets.

It is an inconvenient truth that so far 2006 has been a year in which most major segments of the media have given up on any quest for journalistic balance, fairness, and objectivity when it comes to climate change. The global warming alarmists and their friends in the media have attempted to smear scientists who dare to question the premise of manmade catastrophic global warming, and as a result some scientists have seen their reputations and their research funding dry up.

The media has so relentlessly promoted global warming fears that a British group called the Institute For Public Policy Research—and this from a left-leaning group—issued a report in 2006 accusing media outlets of engaging in what they termed ''climate porn'' in order to attract the public's attention. Bob Carter, a paleoclimate geologist from James Cook University in Australia, has described how the media promotes this kind of fear:

> Each such alarmist article is larded with words such as ''if,'' ''might,'' ''could,'' ''probably,'' ''perhaps,'' ''expected,'' ''projected,'' or ''modeled,'' and many involve such deep dreaming, or ignorance of scientific facts or principles, that they are akin to nonsense.

He concluded this in an op-ed in April of this year.

Another example of this relentless hype is the reporting on the seemingly endless number of global warming impact studies which do not even address whether global warming is going to happen. They merely project the impact of potential temperature increases.

The media endlessly hypes studies that purportedly show that global warming could increase mosquito populations, malaria, West Nile virus, heat waves and hurricanes, threaten the oceans, damage coral reefs, boost poison ivy growth, damage vineyards and global food crops, to name just a few of the global warming-linked calamities. Oddly, according to the media reports, warmer temperatures almost never seem to have any positive effects on plant or animal life or food production.

Fortunately, the media's addiction to so-called ''climate porn'' has failed to seduce many Americans. According to a July Pew Research Center poll, the American public is split about evenly between those who say global warming is due to human activity versus those who believe it is from natural factors or not happening at all. This is significantly down from the previous polls. In addition, an August Los Angeles Times/Bloomberg poll found that most Americans do not attribute the cause of recent severe weather events to global warming, and the portion of Americans who believe global warming is naturally occurring is on the rise. It is nothing short of a miracle and amazing that the American people are not buying this alarmism. It is all they see on TV. It is all they hear about. I would rather believe the American people know when their intelligence is being insulted and they know when they are being used and when they are being duped by the hysterical left.

The American people deserve much better from our fourth estate. We have a right to expect accuracy and objectivity on climate change coverage. We have a right to expect balance in sourcing and fair analysis from reporters who cover the issue. Above all, the media must roll back this mantra that there is scientific ''consensus'' of impending climatic doom as an excuse to ignore recent science. I used to get this all the time from the left. They say: Well, the consensus is already there; we don't want to talk about science. No wonder they don't—because most of the science since 1999 has refuted everything they are asserting. After all, there was a so-called scientific consensus that there were nine planets in our solar system until Pluto was recently demoted.

I am a realist. I want to challenge the news media to reverse course and report on the objective science of climate change, stop ignoring legitimate voices in this scientific debate, and

stop being used by the hysterical left. Breaking the cycles of media hysteria will not be easy since hysteria sells and it is very profitable, but I really believe the issue is getting worn out. They have not been able to come up with anything to support their side. And as Winston Churchill said:

The truth is incontrovertible. Panic may resent it, ignorance may deride it, malice may destroy it, but there it is. And it will be there, and we will understand.

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. SALAZAR. Mr. President, I ask that I be recognized to speak as in morning business for up to 20 minutes.

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

COMPREHENSIVE IMMIGRATION REFORM

Mr. SALAZAR. Mr. President, I come to the floor of the Senate today to talk about the importance of immigration reform in a comprehensive manner. We are in the last week of this legislative session before the November elections. It is obvious to me, in terms of what is going on in the country, that the leadership of the Senate, the Congress, and the White House has decided to allow politics to triumph over the very fundamental national purposes for which we have tried to work together with respect to comprehensive immigration reform.

It is my hope that those speaking for principled immigration reform stand up and say that we are not going to let politics triumph over national security, that we are not going to let politics triumph over the rule of law, which is a central tenet of our Nation, basic to the stability of our Nation, and that we are not going to let politics triumph over the economic and human and moral realities with which we deal in immigration.

As we move forward in the days ahead, dealing with this fence legislation, legislation that would create a fence across Arizona and Texas and Mexico and the possibility of a fence between the United States and Canada, I hope the voices of reason that brought Republicans and Democrats together on the floor of this Senate to say we needed comprehensive immigration reform, once again will say we reject piecemeal legislation that deals with creating a fence only because we know that will not be the answer for the comprehensive immigration reform we need.

When I look at the map which has come out of the House of Representatives which would create a fence which would essentially follow the entire border of Arizona and large pieces of the Texas border, it seems to me what we are doing here in Washington is we are telling those States that we know better here in Washington where the fence ought to be located and we will authorize this fence to be built only in these particulars locations. We are, in fact, not listening to the Department of Homeland Security and to our Border Patrol officers who know there are places where it is appropriate for us to put a fence. Indeed, in our legislation here in the Senate, what we did is we authorized the construction of a fence, but we also recognized there was latitude to be given to those experts who are in charge of making sure we create a secure border.

When I look at what we are trying to do in this debate which will take place with respect to the Secure Fence Act on the floor this year, I would like us to look back and see what was being said around the country with respect to immigration reform just a few months ago when we were debating immigration reform here on the floor of the Senate.

Our Secretary of Homeland Security, Secretary Chertoff, said this about the fence:

Fencing has its place in some areas, but as a total solution, I don't think it's a good solution.

Secretary Chertoff, on February 9, 2006, also said the following:

When you're dealing with the desert, for example, we don't advocate putting a fence in the desert because it's more efficient for us to intercept people when they're in the desert at a place of our own choosing as opposed to being forced to guard the entire fence, right up against the fence.

From our friend, Attorney General Alberto Gonzales, speaking about the fence, back in those days: ''I think that's contrary to our traditions,'' he said, noting that ''99.9 percent'' of illegal immigrants ''come across to seek a better life for their families. . . .'' This is from Attorney General Gonzales.

He continued and said:

I don't know if that would make much sense. We've got a 2,000-mile border. Because of natural geography, we don't need a fence . . . along certain portions of that border. Obviously, we believe it does make sense to have fencing along certain areas of our border. We do have several hundred miles of fencing currently, but the objective here is to make sure we're being smart in securing our border.

Commissioner W. Ralph Basham from Customs and Border Protection said:

It doesn't make sense, it's not practical.

We are in the last week of the legislative session, doing our business prior to the time we go out for elections. So what has happened here? What has happened here is people have decided to ride this horse of immigration reform, with all the divisiveness it has created around the country, to try to gain a political advantage in these November elections. It would be my hope that Democrats and Republicans of this body, who stood with the President in calling for comprehensive immigration reform, would stand by those principles and say: We are going to push forward for immigration reform that really works for our country because it addresses all aspects of the immigration issue we face in America.

We as a Senate did that several months ago. I was very proud to have worked with people such as Senator MCCAIN, Senator GRAHAM, Senator DURBIN, Senator KENNEDY, and a whole host of other people who were involved in putting together what became a comprehensive immigration reform package. It was a law-and-order bill that we debated here on the floor for weeks and was ultimately adopted by a significant bipartisan group of Senators. It was a law-and-order bill because it dealt in a comprehensive way with the issue of immigration. It dealt in a comprehensive way with the recognition that we have a national security crisis on our hands that requires us to deal with immigration reform in a comprehensive way.

The components of the legislative which we subsequently shepherded through the Senate included border security, strengthening our border. It included immigration law enforcement so we make sure that we as a nation uphold our tradition of being a nation of laws; that we enforce our immigration laws here in our country.

It also includes huge registration penalties applying against those who have broken the law and have come to this country illegally.

The law and order bill deserves the support of the Senate. It is my hope as we move forward in the debate on immigration this week that we return to that legislation and move that legislation as an amendment to the legislation which has been introduced in this body.

Let me again quickly walk through to refresh my colleagues' memory about the components of this legislation which we felt so urgently was needed to deal with national security and the economic and human reality relating to the immigration issue.

First, we all want our borders secure. We recognize we can't have a secure nation if we can't deal with the threats we face with homeland security unless we secure the border. We recognize the United States of America as a sovereign nation has a sovereign right to protect its borders. We need to make sure we are protecting our borders.

We included in our legislation many aspects of a cross-border security solution. They included 12,000 new Border Patrol agents which we would add to our Border Patrol effort to make sure we have the right manpower to address the border security issue.

In that legislation through an amendment that was sponsored by our friend from Alabama, we created additional fences that would be established along the border, some 370 miles of

fences that had been established and constructed in critical locations along the border.

We provided new criminal penalties for construction of border tunnels to address what has happened in places where there are currently fences across borders; where people have created tunnels to dig under those fences to come to the United States. We added new checkpoints and points of entry throughout the entire border. We expanded the exit-entry security system at all land borders and airports.

Our legislation dealt in a comprehensive way moving forward to make sure we were creating a secure border. That was a key component of legislation we are dealing with.

Beyond securing our borders, which is very essential as we put together this effort on comprehensive immigration reform, we also recognized that we as a nation must enforce our immigration laws. So we included in our legislation significant provisions to ensure we are enforcing those laws.

We added 5,000 new investigators to help us enforce our laws. We established in that legislation 20 new detention facilities so we can effectively process those who are caught here in our country illegally. We included provisions in our legislation that would reimburse States for detaining and imprisoning criminal aliens. That is an issue which has affected local and State governments throughout our country.

We included in our legislation requirements for a faster deportation process. We increased penalties for gang members, for money laundering, and human trafficking. We increased document fraud detection, and we created new fraudproof immigration documents for people who are here in this country with biometric identifiers.

Finally, we expanded authority to remove suspected terrorists from our country.

Looking at what we did in coming up with an immigration enforcement package in our country, we said we were going to ensure that we as a nation of laws would have a legal system in place that would in fact be enforceable and that we would put the resources behind that enforcement.

We also dealt with another issue; that is, an issue that has caused so much controversy around this country. Essentially, it had to do with the question what do you do with 11 million or 12 million human beings currently residing in our country. We felt as a group of Democrats and Republicans working on this legislation that we needed to come up with a realistic and humane way of approaching the 12 million people who are here illegally in our country. These are the people who probably have cleaned the hotel rooms and motel rooms where most Americans stay. These are the people who are working at construction sites in each one of the our States around the country. These are the people who are the backbone of the agricultural workforce in places such as Idaho, Colorado, and throughout our great Nation.

So we decided to come up with a program where we would deal with these 12 million people in an honest, realistic, and straightforward manner. We said we would require them to pay a fine. They have broken the law. They will be punished. They have broken the law and they will be punished by the requirements that they pay a fine for their illegal conduct. We require that they register with the U.S. Government. That is not a requirement for any U.S. citizen, but we require these people to step forward, to come out of the shadows and to register themselves with the U.S. Government.

We require them to pay additional registration fees. We require them to learn English. We require them to learn American history and government. We require them to pass medical exams. And we require them to be continuously employed with a valid temporary visa.

We came up with a program that the President himself has talked about in positive terms, where essentially we would bring these people to come out of the shadows. We require them to go to the back of the line. We require them to pay a penalty. We require them to learn English, and we require them to learn about American history as a realistic way of approaching the reality of 12 million human beings who live here in our country today.

Let me come back and talk a little bit about the piecemeal approach—this political approach which is being talked about here in the Congress today. It is in fact a piecemeal approach because all of those who have studied this issue recognize that unless we deal with immigration issues in a comprehensive way, it will not work. Many of us in this Chamber have had many conversations with the President of the United States about the need for comprehensive immigration reform. On August 3 of this year, in a public statement, the President said:

> I'm going to talk today about comprehensive immigration reform. I say comprehensive because unless you have all five pieces working together it's not going to work at all.

This is the President of the United States saying it is not going to work at all unless we do this in a comprehensive manner.

In another statement, he said the following:

> We will fix the problems created by illegal immigration, and we deliver a system that is secure, orderly, and fair. So I support comprehensive immigration reform that will accomplish these five objectives.

That was the President of our country.

He said in another statement on May 15 of 2006 the following:

> Some in this country argue that the solution is to deport every illegal immigrant, and that any proposal short of this amounts to amnesty. I disagree. It is neither wise nor realistic to round up millions of people, many with deep roots in the United States, and send them across the border. There is a rational middle ground.

That is from the President's Presidential address of May 15, 2006.

On May 15, on that same day, he said the following:

> An immigration reform bill needs to be comprehensive, because all elements of this problem must be addressed together, or none of them will be solved at all. Congress can pass a comprehensive bill for me to sign into law.

That is what the President of the United States has asked us as a Congress to do. That was what Democrats and Republicans in this Chamber came together to do several months ago.

It would be my hope as we consider the legislation which we will be debating this week that we take the statements of the President, the statements that have been made by members of his administration, and statements made here on the floor, and that we address this issue of immigration reform in a manner that is truly going to work as opposed to addressing it in a piecemeal manner as has been suggested by the legislation which we will be considering.

I conclude by asking my colleagues in the Senate today to make sure as we move forward to not let politics triumph over the national security issue of the broken borders that we face today; that we as a Senate do not let politics triumph over the rule of law which makes us have the kind of country we can all be very proud of because we abide by the rule of law; that we as a country make sure we stand up for the human and moral issues that are very much on stage in this debate over immigration reform. Those issues should take precedence over a political agenda which is obviously unfolding with this legislation that has been brought to the floor of the Senate today.

Finally, I ask the White House, President Bush, to end the silence on this issue. President Bush has been working on this issue for a long time. He is a former Governor of a border State. He knows what is at stake on this issue. I hope the White House can provide this body and the House of Representatives with the kind of guidance they were providing us when we were dealing with the issue some months ago.

I thank the Chair. I yield the floor.

Mr. KENNEDY. Mr. President, how much time is allocated in morning business?

The PRESIDING OFFICER. There is 37 minutes.

Mr. KENNEDY. For each speaker, is there a time limitation?

The PRESIDING OFFICER. On the Democratic side, 37 minutes remain.

GLOBAL TERRORISM

Mr. KENNEDY. Mr. President, according to reports in Sunday's New

York Times and Washington Post, a National Intelligence Estimate prepared last April concludes that the war in Iraq has made the problem of global terrorism worse and that terrorist cells have metastasized and spread across the globe.

For more than 3 years, President Bush and the Republican Congress have repeatedly claimed the war in Iraq is making America safer. Now, we learn that the 16 agencies in the intelligence community concluded just the opposite last April—that the Iraq war has become a rallying cry for extremists against the United States and made the war on terror more difficult to win.

The American people have the right to hear from our Nation's top intelligence official about the conclusions of the intelligence community in this report. Before Congress adjourns this week, Director of National Intelligence John Negroponte should testify in open session about this report. In addition, an unclassified version of the key judgments and discussion about Iraq in the report should be made available to the public in a way that protects sources and methods.

With more than 140,000 American troops on the ground in Iraq and terrorist attacks increasing around the globe, the stakes for the safety of all Americans are enormously high. It is our obligation to hear directly from Mr. Negroponte before adjourning at the end of this week. It is essential that Congress and the American people obtain a fuller understanding about the conclusions of the intelligence community about the impact of the Iraq war.

In addition, the President and Vice President must explain statements they have made that are directly at odds with this National Intelligence Estimate.

Despite the conclusion of the intelligence community that the war has been a recruitment tool for a new generation of extremists, on numerous occasions since the document was prepared, President Bush has claimed that the war has made America safer.

On September 7, President Bush said:

> We've learned the lessons of 9/11 * * * We've gone on the offense against our enemies, and transformed former adversaries into allies. We have put in place the institutions needed to win this war. Five years after September the 11th, 2001, America is safer—and America is winning the war on terror.

On September 11, President Bush said:

> Saddam's regime posed a risk that the world could not afford to take. The world is safer because Saddam Hussein is no longer in power.

Despite the conclusion of the intelligence community 5 months earlier that new threats are emerging because of the war in Iraq, Vice President CHENEY said the exact opposite on September 10. He said:

> We are better off there because of what we've done to date. We are less likely to have a threat emerge against the United States from that corner of the world than would have been the case if Saddam were still there.

The American people deserve to know whether the President and Vice President are intentionally misleading us about our safety or whether they are simply ignoring the intelligence community. Clearly, America deserves better from its leaders.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. I ask to speak for up to 20 minutes.

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

Mr. CORNYN. I ask unanimous consent I be permitted to speak for up to 20 minutes in morning business.

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

TERRORIST TRIBUNALS

Mr. CORNYN. Mr. President, one of the lessons America learned after the tragic events of September 11, 2001, is the danger of treating our fight against global terrorism as a law enforcement function alone. This was documented time and time again, whether it is the wall that was erected that prevented intelligence authorities from getting access to important information and sharing it with law enforcement authorities, and vice versa, or whether it was waiting until a terrorist attack occurred and then merely investigating in the rubble and the destruction left behind, and then prosecuting the person, if, in fact, he could be prosecuted and brought to justice.

It concerns me a great deal that we have seemed to lapse once again into a pre-September 11 mindset where some of our colleagues, as we debate the use of terrorist tribunals and the access to our court system those convicted of war crimes should have, seem to have forgotten some of those lessons learned from September 11. It is important we not fight this global war on terrorism strictly as a law enforcement matter, punishing conduct after the fact rather than gaining intelligence we need in order to detect, deter, and disrupt terrorist attacks from occurring in the first place. Specifically, I will address what sort of avenues of appeal detainees at Guantanamo Bay should have regarding their convictions and their status review.

Members may recall late last year the Congress passed something called the Detainee Treatment Act in which we thought we had dealt comprehensively with the issue of how detainees, unlawful combatants, should be treated. Of course, we reiterated our commitment, the ban against torture, cruel and inhumane and degrading conduct, but in that important piece of legislation, Congress also said that detainees, these unlawful combatants, people who do not observe the laws of war, who target innocent civilian populations, are not entitled to receive the full panoply of rights accorded to American citizens when tried in an Article III court of law.

Specifically, we said that for the writ of habeas corpus that otherwise might be available to them, we would substitute an alternative procedure composed of three different things. We created the combat status review tribunal, first, which was designed to make sure the individuals who are actually detained at Guantanamo Bay were, in fact, enemy combatants, and to make sure we did not in the course of or in the fog of war sweep up innocent bystanders who were not actually a threat to the United States. These combat status review tribunals have very important procedures I will mention in a moment.

However, we also saw the use of administrative review boards that on an annual basis review the status of a particular detainee at Guantanamo Bay to determine, No. 1, whether they were a continuing threat to the American people or our allies, and, No. 2, whether additional actionable intelligence could be obtained from them during the interrogation process.

This administrative review board is an annual process and has resulted in the release of many of the detainees who were at Guantanamo Bay who had been determined to no longer be a danger to the American people or our allies.

The fact is these two procedures—the combatant status review tribunal and the administrative review board—are coupled together with an additional right of appellate review provided under the Detainee Treatment Act which is full review of a conviction by a military commission by the District of Columbia Court of Appeals in the Nation's capital. That court is not restricted in any way to review any and all errors they believe are material to the outcome of the case, and I believe, combined with the combatant status review tribunal and the administrative review board, does provide a due process for these detainees in a way that does not jeopardize this legislation, should it be ultimately reviewed by the U.S. Supreme Court.

Actually, I think it might surprise some of our colleagues to be talking about this issue because they may well have thought we addressed this issue late last year when we passed the Detainee Treatment Act. The fact is, in the Hamden case, handed down in June, the U.S. Supreme Court said Congress had not made sufficiently clear its intention to apply the Detainee Treatment Act to pending cases. Therefore, it went on to decide the Hamden case, refused to throw out the appeal based on a lack of jurisdiction, and, in fact, left us with a situation where about 300 of the detainees at Guantanamo Bay have about 600 applications for writs of habeas corpus pending in American courts.

The United States provides adequate evidentiary hearings to ensure that detainees held at Guantanamo Bay are, in fact, unlawful combatants, and, No. 2, pose a threat to the United States national security interests. These detainee status hearings and other procedures provided by the United States to terrorist detainees at Guantanamo Bay meet, and in many ways exceed, the requirements for prisoners of war under article V of the Geneva Conventions.

As I mentioned, on top of these status hearings, meaningful judicial review is provided by the U.S. Federal Court of Appeals. Final judicial review is provided of those decisions. These status hearings and judicial review mechanisms were codified as part of that Detainee Treatment Act.

The District of Columbia Circuit Court of Appeals—which many in this Chamber have referred to as the second highest court in the land—has the power to review not only whether the Department of Defense faithfully followed the procedures prescribed by Congress but also whether those procedures comport with the U.S. Constitution.

For some to say, as I actually heard this morning in a hearing we had before the Senate Judiciary Committee, that ''no meaningful judicial review'' is provided to unlawful combatants is, I claim, inaccurate and misleading.

While providing these judicial procedures, Congress saw fit to foreclose the possibility of a flood of habeas corpus petitions overwhelming the Federal courts and distracting our men and women in uniform from prosecuting the war effort. The status hearings and judicial review mechanisms are intended to satisfy the meaningful review requirement in the absence of the ability to file a petition for writ of habeas corpus. Alien enemy combatants, whether lawful or unlawful under the Geneva Conventions, have never been found by the U.S. Supreme Court to have a right to file a habeas corpus petition in American Federal courts.

In 1950, the U.S. Supreme Court ruled in a case called Eisentrager v. Johnson that enemy combatants held by U.S. forces overseas are not entitled to the ''privilege of litigation'' and cannot sue our military in our courts.

Beyond the constitutional arguments for removing habeas jurisdiction, there are important practical considerations, as well, as explained in the Eisentrager decision. The Supreme Court explained clearly and eloquently why we cannot let enemy combatants sue the U.S. military and our soldiers in American Federal courts. It said:

> Such trials would hamper the war effort and bring aid and comfort to the enemy . . . It would be difficult to devise a more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigation would be a conflict between judicial and military opinion highly comforting to enemies of the United States.

These burdens, as identified by the U.S. Supreme Court placed on our military by enemy combatant litigation, persist today.

The Department of Justice has detailed the significant burdens. It has said:

> The detainees have urged habeas courts to dictate conditions on [Guantanamo Naval] Base ranging from the speed of Internet access afforded their lawyers to the extent of mail delivered to the detainees.

More than 200 cases have been filed on behalf of 600 purported detainees. Curiously, this number exceeds the number of detainees actually held at Guantanamo Bay, which is closer to 500.

Also, according to the Department of Justice:

> This habeas litigation has consumed enormous resources and disrupted the day-to-day operation of Guantanamo Naval Base.

The United States also notes that this litigation has had a serious negative impact on our war against al-Qaida. According to the U.S. brief, in the al-Qaida case:

> Perhaps most disturbing, the habeas litigation has imperiled crucial military operations during a time of war. In some instances, habeas counsel have violated protective orders and jeopardized the security of the base by giving detainees information likely to cause unrest. Moreover, habeas counsel have frustrated interrogation critical to preventing further terrorist attacks on the United States.

Michael Ratner, a lawyer who has filed lawsuits on behalf of numerous enemy combatants held at GTMO, boasted about disrupting U.S. war efforts to a magazine—Mother Earth magazine. He said:

> The litigation is brutal for [the United States]. It's huge. We have over one hundred lawyers now from big and small firms working to represent the 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?

Former Attorney General Bill Barr explained the folly of applying American criminal procedure and judicial process and standards to questions of the enemy combatants. He said:

> In armed conflict, the body politic is not using its domestic disciplinary powers to sanction an errant member, rather it is exercising its national defense powers to neutralize the external threat and preserve the very foundation of all our civil liberties. Here the Constitution is not concerned with handicapping the government to preserve other values. Rather it is designed to maximize the government's efficiency to achieve victory—even at the cost of ''collateral damage'' that would be unacceptable in the domestic realm.

Attorney General Barr brought these concerns into relief with the very telling hypothetical example. He said:

> Let me posit a battlefield scenario. American troops are pinned down by sniper fire from a village. As the troops advance, they see two men running from a building from which the troops believe they had received sniper fire. The troops believe they are probably a sniper team. Is it really being suggested that the Constitution vests these men with due process rights as against the American soldiers? When do these rights arise? If the troops shoot and kill them—i.e., deprive them of life—could it be a violation of [their] due process [rights]? Suppose they are wounded and it turns out they were not enemy forces. Does this give rise to Bivens' Constitutional tort actions for violation of due process? Alternatively, suppose the fleeing men are captured and held as enemy combatants. Does the Due Process Clause really mean that they have to be released unless the military can prove they were enemy combatants? Does the Due Process Clause mean that the American military must divert its energies and resources from fighting the war and dedicate them to investigating the claims of innocence of these two men?
>
> This [simply] illustrates why military decisions are not susceptible to judicial administration and supervision. There are simply no judicially-manageable standards to either govern or evaluate military operational judgments. Such decisions invariably involve the weighing of risks. One can easily imagine situations in which there is an appreciable risk that someone is an enemy combatant, but significant uncertainty and not a preponderance of evidence. Nevertheless, the circumstances may be such that the President makes a judgment that prudence dictates treating such a person as hostile in order to avoid an unacceptable risk to our military operations. By their nature, these military judgments must rest upon a broad range of information, opinion, prediction, and even surmise. The President's assessment may include reports from his military and diplomatic advisers, field commanders, intelligence sources, or sometimes just the opinion of front line troops. He must decide what weight to give each of these sources. He must evaluate risks in light of the present state of the conflict and the overall military and political objectives of the campaign.

So as we take up this important issue of terrorist tribunals, and reaffirming our commitment in the Detainee Treatment Act, which we passed just last year, these unlawful and lawful combatants—the enemy captured on the battlefield—are entitled to process, but they are not entitled to all of the rights and privileges of an American citizen in a court of law.

It is only just and fitting we do provide this alternative process through reviewing the combat status tribunal decisions to make sure we are accurate as a matter of fact in detaining enemy combatants of the United States. It is entirely appropriate that we have an annual administrative review board to look at and determine whether these individuals should continue to be detained in light of additional information and in light of changing circumstances. And it is entirely appropriate that they be provided an appellate review in the District of Columbia Court of Appeals on all bases of decision in the combat status review tribunal and the administrative review process and also that they be provided an appeal following any conviction of a war crime by a military tribunal. But it is not appropriate to lapse into a

pre-9/11 mentality of treating the war on terror as simply another law enforcement action, treating it as another criminal prosecution just such as any other criminal prosecution that occurs on a regular basis in our State and Federal courts. The dangers of doing so mean we will have lapsed back into those perhaps happier times but the blissful ignorance those happier times produced.

We are at war. We have an enemy that continues to try to explore our vulnerabilities. And as we know from the recently disrupted plot emanating out of London, al-Qaida and our enemies continue to try to find vulnerabilities that will allow them to hit us here at home. It is absolutely essential that we live up to our responsibilities as elected representatives of the American people to maintain the safety and security of those people by making sure we meet the obligations imposed upon Congress and the Federal Government by the U.S. Supreme Court and that we provide basic rights as dictated by the Court in the Hamdan decision. But it is not appropriate that we tie the hands of our military commanders, that we perhaps undermine our ability to prosecute and win this war on terror and keep America safe by treating this war on terror and the appellate rights of detainees in a way that makes it harder for us to keep America safe.

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

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

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

EXECUTIVE SESSION

NOMINATION OF FRANCISCO AUGUSTO BESOSA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO

The PRESIDING OFFICER. Under the previous order, the hour of 5:20 p.m. having arrived, the Senate will proceed to executive session for the consideration of Executive Calendar No. 920, which the clerk will report.

The legislative clerk read the nomination of Francisco Augusto Besosa, of Puerto Rico, to be a United States District Judge for the District of Puerto Rico.

The PRESIDING OFFICER. Under the previous order, the time until 5:30 p.m. shall be equally divided between the chairman and ranking member of the Judiciary Committee. The chairman is recognized.

Mr. SPECTER. Mr. President, I have sought recognition to recommend to my colleagues the confirmation of Francisco Augusto Besosa to be a district court judge for the District of Puerto Rico.

Mr. Besosa comes before the Senate with an impressive record. He received his Bachelor's degree from Brown University in 1971 and his law degree from Georgetown University Law Center in 1979. Prior to attending law school, he served as an intelligence officer in the U.S. Army and was awarded the Meritorious Service Medal.

Mr. Besosa has had a distinguished career as a practicing lawyer in Puerto Rico. He has spent 70 percent of his time practicing in the Federal courts, with the balance in the State courts. His principal occupation has been in the civil field, and he has had considerable trial practice. Mr. Besosa is currently a partner in the law firm of Absuar Muniz Goyco and Besosa, a firm he joined in 1994. The American Bar Association has rated Mr. Besosa ''well qualified.''

Mr. Besosa was passed out of the Judiciary Committee unanimously. I am pleased in my capacity as chairman of the committee to recommend him to my colleagues for confirmation.

Mr. LEAHY. Mr. President, today, as we begin the last week of this legislative session, the Senate considers the nomination of Francisco Augusto Besosa for a lifetime appointment to the U.S. District Court for the District of Puerto Rico. Mr. Besosa's nomination was reported unanimously to the Judiciary Committee on Thursday of last week.

Last week the Judiciary Committee held two business meetings dedicated to judicial nominations. I want to thank all Senators for working with us to expedite consideration of nominations like that of Mr. Besosa. I cooperated last Tuesday with the Chairman's request for a Special Executive Business Meeting. I came to the meeting and established the quorum. The Chairman had said that the meeting would be held to burn holds on two non-controversial circuit court nominees. I agreed to try to expedite consideration of the nomination of Kent Jordan, a nominee to the Third Circuit. Peter Keisler's nomination to the D.C. Circuit is, however, by no means non-controversial. Nonetheless, in an effort to work with the Chairman I stayed and the Republicans held over the Keisler nomination, as well.

Then, although we had not discussed either in advance, in order to be accommodating, I did not object when, at the request of Senator GRASSLEY and Senator DEWINE, the nominations of John Alfred Jarvey and Sara Elizabeth Lioi were also held over. Those nominations will now be reviewed and available for consideration by the Committee later this week in accordance with the rules of the Committee.

Mr. Besosa's nomination was unanimously reported at our regular Thursday business meeting. In addition, we reported a number of other judicial nominations, including one for a judicial emergency vacancy that was given expedited consideration. I thank the Chairman for his kind words in which he acknowledged our cooperation.

The Democratic Senators on the Committee have worked hard to accommodating the Chairman's demanding schedule. The Chairman has already held three hearings during the last three weeks and has another scheduled for this week, in addition to another special business meeting. We have held 18 judicial nominations hearings this year, including a Supreme Court hearing, as well as two additional executive nominations hearings.

I have been saying for some time that I feared we would sacrifice progress on nominations that can be moved for debate on controversial nominations. It appears that my fears will be realized this week. This Wednesday afternoon and evening, a hearing on the highly controversial nomination of Michael Wallace to the Fifth Circuit has been noticed and renoticed. As the times have changed, it has become even less likely that it will be helpful or productive during this extremely busy time of year. Of course, Mr. Wallace is the first appellate court nominee in 25 years to have been rated unanimously not qualified by the ABA peer review committee.

After today, the Senate will have confirmed 31 judicial nominees this year. The Republican Senate confirmed only 17 of President Clinton's judicial nominees in the 1996 session. The Senate has confirmed seven circuit court nominees, which is seven more than the Republican Senate confirmed with a Democratic President during the 1996 session. That year, Republicans would not consider or confirm a single appellate court nomination for an entire year-long session of the Senate, not one.

This is a far cry from the days when the Republican Congress pocket filibustered more than 60 of President Clinton's nominees, refusing even to bring them up for a vote in Committee. Of course, during the 17 months that I was Chairman, we were able to confirm 100 of President Bush's nominees. In 20 months of Republican control, with a Republican President, even counting Mr. Besosa's confirmation today, that number will stand at about half that—just 53.

We could have accomplished more this year if the White House had sent over consensus nominees early in the year. The White House did not. Many of the nominees we are now trying to consider now were not even nominated until July. Regrettably, the administration concentrated on a few highly controversial nominees and delayed until recently sending nominations and

thereby prevented us from having the time to do any meaningful review. We are now in the position of trying to rush through too many nominees too quickly for us to give them real consideration.

The White House continues to undermine our process. Instead of working with us and focusing on consensus nominees, the President sent back to us five highly controversial nominees who had been returned to the White House. Sadly, the Senate Republican leadership, which has rubberstamped a number of very poor nominations, may force us to spend time and energy debating troublesome nominations, rather than reviewing and confirming good ones.

We have been accommodating, and we will continue to be, but the Judiciary Committee and the Senate should not be a rubber stamp for the President's nominations. We should be taking our constitutional responsibility to advise and consent seriously. That means carefully reviewing the nominees' records and making sure that these are appropriate nominees for lifetime appointments to important Federal judgeships.

A customary practice in the Senate would have been for the leaders, the Republican and Democratic leaders, to have sat down with the Chairman and the Ranking Member by now and have worked out a process to conclude the year with respect to judicial nominations. I would have urged that we concentrate on completing our work on those nominations most likely to be confirmed and to maximize the number of confirmations. Sadly, that meeting has not occurred and apparently will not.

I congratulate Francisco Besosa and his family on his confirmation today.

Mr. President, in the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. 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. LOTT. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Francisco Augusto Besosa, of Puerto Rico, to be United States District Judge for the District of Puerto Rico?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Ohio (Mr. DEWINE), the Senator from Utah (Mr. HATCH), the Senator from Arizona (Mr. MCCAIN), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Louisiana (Mr. VITTER).

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Montana (Mr. BAUCUS), the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Hawaii (Mr. INOUYE), the Senator from Wisconsin (Mr. KOHL), and the Senator from New Jersey (Mr. MENENDEZ) are necessarily absent.

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

The result was announced—yeas 87, nays 0, as follows:

[Rollcall Vote No. 253 Ex.]

YEAS—87

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

NOT VOTING—13

Akaka	DeWine	Menendez
Baucus	Hatch	Santorum
Bayh	Inouye	Vitter
Biden	Kohl	
Brownback	McCain	

The nomination was confirmed.

The PRESIDING OFFICER (Mr. MARTINEZ). The President will be immediately notified of the Senate's action.

Mr. FRIST. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business.

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

HONORING OUR ARMED FORCES

PRIVATE FIRST CLASS NICHOLAS A. MADARAS

Mr. LIEBERMAN. Mr. President, I wish to pay tribute to PFC Nicholas A. Madaras, U.S. Army, of Wilton, CT.

While in Boqouba, Iraq, with the 168th Combined Arms Battalion, 3rd Brigade Combat Team, 4th Infantry Division, Private Madaras died on September 3, 2006, of injuries he sustained when an improvised explosive device detonated near his dismounted patrol.

He is remembered by those who knew him in the community as a leader on the soccer field, a sharp and focused student, a quiet but intense warrior, and as a caring and creative young man. He is remembered by his comrades as a good-humored soldier in a league of extraordinary heroes, mature beyond his years. Described as having tremendous potential with a heart of courage, he caused many to wonder why he had interrupted a promising education and chose the Army instead. Feeling uncomfortable just watching others serve, he responded to them that he was compelled to do his part for his country.

Private Madaras epitomizes the American spirit which permeates our great Nation. Living as a true patriot and defender of our principles of freedom and justice, he consistently put others ahead of himself. While I am saddened by his loss, I am also both proud and grateful that we have the kind of fighting force exemplified by Private Madaras serving in our Armed Forces.

Our Nation extends its heartfelt sympathy to his family. I offer my condolences to his father William, to his mother Shalini, to his sister Marie, and to his brother Christopher. We extend our appreciation for sharing this outstanding soldier with us, and we offer our prayers and support.

SUCCESSFUL NEW MEXICO PROGRAMS

Mr. DOMENICI. Mr. President, I rise today to discuss some successful Department of Defense and Department of Homeland Security programs created in my home State of New Mexico.

One project, the foreign language translator, is a hands-free, voice-activated translator that allows troops to speak English phrases that are automatically broadcast in Arabic. The electronics for the translator are built by Crane Corporation of Albuquerque, NM and Laguna Industries assembles and tests the units in Cibola County, NM. I secured $1.4 million for this project in fiscal year 2005 Department of Defense funding, and its usefulness was highlighted in a June 19 Forbes article which quoted a Coast Guardsman as saying the device is the best interpreting tool available to date.

Another project, the National Infrastructure Simulation and Analysis Center, or NISAC, is a joint Sandia/Los Alamos National Laboratories initiative that was created in 2000. NISAC studies critical infrastructure and models the effects of a potential terrorist attack on such infrastructure. This work has proven invaluable to our Nation. NISAC accurately predicted

the effect of Hurricane Katrina on New Orleans and was cited by the White House as a positive part of the Federal Government's efforts in response to Hurricane Katrina. I have helped fund NISAC since its inception, including securing $7 million for a NISAC facility in fiscal year 2003 and providing $5 million more than the President requested for the program in fiscal year 2006.

Lastly, the Expeditionary Unit Water Purification, or EUWP, Program is a desalination program developed by the Office of Naval Research and tested in Otero County, NM. I have secured more than $30 million for this project, and it has been money well spent. When the water supply at the Coast Guard's Loran Station at Port Clarence, AK was contaminated last summer, an EUWP unit was deployed to Alaska to create fresh water from brackish water for troops there. In the aftermath of Hurricane Katrina, two EUWP units were deployed to Mississippi to provide fresh water to both victims and rescue workers. Clearly, the program is accomplishing its mission.

I am proud of these success stories and am glad to have helped three such successful programs secure the Federal funding they needed to do—important tasks for our Nation.

VISIT OF KAZAKHSTAN PRESIDENT NURSULTAN NAZARBAYEV

Mr. FEINGOLD. Mr. President, I would like to bring attention to a visitor the White House plans to receive this week—the President of Kazakhstan, Nursultan Nazarbayev. My colleagues in this body can be forgiven if they haven't heard much about his visit; there aren't going to be any press conferences or state dinners to welcome him. In fact, the Bush administration has kept very quiet about the invitation it extended to President Nazarbayev, who is expected to arrive later this week. I don't blame them for trying to downplay the visit; President Nazarbayev is widely acknowledged to be a corrupt dictator and someone who has built a record of contempt for the rule of law, the quashing of a nascent democracy, and the destruction of a free press. This is not the kind of leader who should be granted the privilege of an official White House visit.

According to the State Department's most recent Human Rights Report, in 2005 Kazakhstan's ''human rights record remained poor. Legislation enacted during the year seriously eroded legal protections for human rights and expanded the powers of the executive branch to regulate and control civil society . . . [The laws that were passed] encroached on political rights, freedom of the press, freedom of religion, and other human rights.'' The Justice Department and the FBI have accused President Nazarbayev—who has been in control of the country since 1990—of corruption and reportedly considered indicting him on bribery and other charges under the Foreign Corrupt Practices Act. Instead they indicted his personal financial adviser, James Giffen, while identifying President Nazarbayev as the recipient of tens of millions of dollars in payoffs of cash and gifts in an oil lease deal.

President Bush has said that his goal is to spread democracy and the rule of law around the world. But this goal is hard to reconcile with his support for one of the world's most repressive and corrupt dictatorships.

Mr. President, the Washington Post recently published an insightful article on this issue, which I would like to have printed in the RECORD. I hope my colleagues will have the opportunity to read it and will join me in calling on President Bush to cancel this visit and send the message that there is no room in the White House for those who have such disregard for democracy and the rule of law. I ask unanimous consent that this article be printed in the RECORD.

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

WITH KAZAKH'S VISIT, BUSH PRIORITIES CLASH—AUTOCRAT LEADS AN OIL-RICH COUNTRY

(By Peter Baker)

AUGUST 29, 2006.—President Bush launched an initiative this month to combat international kleptocracy, the sort of high-level corruption by foreign officials that he called ''a grave and corrosive abuse of power'' that ''threatens our national interest and violates our values.'' The plan, he said, would be ''a critical component of our freedom agenda.''

Three weeks later, the White House is making arrangements to host the leader of Kazakhstan, an autocrat who runs a nation that is anything but free and who has been accused by U.S. prosecutors of pocketing the bulk of $78 million in bribes from an American businessman. Not only will President Nursultan Nazarbayev visit the White House, people involved say, but he also will travel to the Bush family compound in Maine.

Nazarbayev's upcoming visit, according to analysts and officials, offers a case study in the competing priorities of the Bush administration at a time when the president has vowed to fight for democracy and against corruption around the globe. Nazarbayev has banned opposition parties, intimidated the press and profited from his post, according to the U.S. government. But he also sits atop massive oil reserves that have helped open doors in Washington.

Nazarbayev is hardly the only controversial figure received at the top levels of the Bush administration. In April, the president welcomed to the Oval Office the president of Azerbaijan, Ilham Aliyev, who has been accused of rigging elections. And Secretary of State Condoleezza Rice hosted Teodoro Obiang Nguema, the president of Equatorial Guinea, who has been found to have millions of dollars stashed in overseas bank accounts.

But the Kazakh leader has received especially warm treatment, given that the same government that will host him next month plans to go to trial in federal court in January to prove that he was paid off in the 1990s by a U.S. banker seeking to influence oil rights. Although the banker faces prison time, Nazarbayev has not been charged and has called the allegations illegitimate.

In addition to Nazarbayev's upcoming visit, Vice President Cheney went to the former Soviet republic in May to praise him as a friend, a trip that drew criticism because it came the day after Cheney criticized Russia for retreating from democracy. The latest invitation has sparked outrage among Kazakh opposition.

''It raises the question of how serious is the determination to fight kleptocracy,'' said Rinat Akhmetshin, director of the International Eurasian Institute, who works for Kazakh opposition. ''Nazarbayev is a symbol of kleptocracy . . . and yet they are bringing him in. That sends a very clear signal to people inside Kazakhstan who are very well aware that he stole money from them.''

The White House declined to comment because it has not yet officially announced the visit, but Deputy Assistant Secretary of State Evan Feigenbaum was in Kazakhstan last week working out details, and Kazakh officials said the trip will take place in late September. A spokesman for former president George H.W. Bush confirmed that Nazarbayev will visit Kennebunkport as part of his U.S. stay. ''An old friend of his was in the U.S. and he extended an invitation,'' Bush spokesman Tom Frechette said.

An administration official, speaking on the condition of anonymity because the invitation has not been announced, said President Bush often meets with leaders of countries ''that are not yet democracies'' and uses the time to push for more freedom. ''We've always been frank in our discussions with government officials from Kazakhstan about our concerns about lack of democratic movement, and we always press them for democratic reform,'' the official said.

Kazakhstan, a vast nation of 15 million on the Central Asian steppe, has emerged as an increasingly important player in the world energy market. With the largest crude oil reserves in the Caspian Sea region, Kazakhstan pumps 1.2 million barrels a day and exports 1 million of that. The Kazakh government hopes to boost production to 3.5 million barrels a day by 2015, rivaling Iran. U.S. and Russian companies and governments have competed for access to its oil.

Nazarbayev, 66, a blast-furnace operator-turned-Communist functionary, has led Kazakhstan since 1990, when it was part of the Soviet Union, and has since won a series of tainted elections. His government has banned or refused to register opposition parties, closed newspapers and harassed advocacy groups. Two opposition leaders were found dead of gunshots in disputed circumstances.

But the Bush administration considers Nazarbayev a friendly, stable moderate in a region of harsher, sometimes hostile dictators and has been hopeful he will open up and cleanse his government. The Kazakh government under Nazarbayev recently embarked on an anti-corruption campaign that has resulted in arrests of mid-level officials.

''I really do think he has learned how to be clean,'' said Martha Brill Olcott, a Kazakhstan specialist at the Carnegie Endowment for International Peace. ''He has learned a lot more about how you can promote to some degree divestiture [of assets]. Most of his holdings are, I wouldn't say transparent, but they're more so.''

Others aren't sure. ''When the United States is transparently soft on friendly dictators like Nazarbayev, it undermines the effort to be tough on not-so-friendly dictators,'' said Tom Malinowski of Human Rights Watch.

Transparency International, an anti-corruption organization, ranks Kazakhstan 2.6 on a 10-point scale, placing it 107th out of 159 countries graded. That's a decline from a 3.0 grade and 65th place in 2000.

''You don't have free elections, and the press is pretty much controlled by his family, and a significant portion of assets in

Kazakhstan are directly or indirectly controlled by his family,'' said Miklos Marschall, the group's regional director. ''But on the other hand, unlike other Central Asian countries, he is willing to initiate some step-by-step reforms. From our perspective, he's not the worst.''

Nazarbayev visited the Bush White House in 2001—before the Justice Department filed a case in 2003 alleging that he had taken bribes and before the president issued a 2004 proclamation banning corrupt foreign officials from visiting the United States. A State Department official said hundreds of foreign officials have been denied visas under Bush's proclamation but could not explain how it would not apply in Nazarbayev's case.

U.S. prosecutors have charged businessman James H. Giffen with steering $78 million in bribes to Nazarbayev and one of his former prime ministers in the 1990s in exchange for influence in oil transactions. In addition to cash transferred to secret Swiss bank accounts, Nazarbayev, originally identified in court papers simply as ''KO–2,'' allegedly received two snowmobiles, an $80,000 speedboat, fur coats for his wife and daughter, and tuition for his daughter at a Swiss boarding school and later George Washington University.

Giffen's attorneys have argued that he is not guilty because his actions were sanctioned by the U.S. government. Giffen says he disclosed his activities to agencies including the CIA and was encouraged to continue for national security reasons. The Justice Department is appealing a court decision allowing the defense. The case is scheduled to go to trial Jan. 16.

MEDICARE

Mr. NELSON of Nebraska. Mr. President, during the August recess, I heard from many physicians in Nebraska who are concerned about the looming cut in their Medicare payments. If Congress does not act soon, Nebraska's doctors will face a $17 million loss next year. In addition, the cuts are scheduled to continue for the following 8 years if they are not reversed. During this time period, each Nebraska physician will lose $27,000 annually.

Physicians want to serve Nebraska's seniors, but they simply cannot afford to accept an unlimited number of new Medicare patients into their practices if Medicare payments do not keep up with the cost of providing care.

In addition to listening to my constituents, I also think it is helpful to listen to experts when making policy decisions. Medicare payment policy can be quite complicated, so Congress established the Medicare Payment Advisory Commission, MedPAC, to make recommendations to us. MedPAC consists of a group of health experts that annually makes Medicare policy recommendations to Congress. For next year, MedPAC recommended that Congress eliminate the scheduled payment cut and instead raise physician payments by 2.7 percent.

I think we should listen to Nebraska's doctors and policy experts and stop the Medicare cut. We are running out of time. Congress must act now to stop the impending cuts. America's seniors and our health professionals deserve no less.

ADDITIONAL STATEMENTS

TRIBUTE TO ARTHUR SAUVIGNE, MD

● Mr. JEFFORDS. Mr. President, it gives me great pleasure today to pay tribute to Dr. Arthur Sauvigne, a doctor who has made it his life's work to care for veterans. Dr. Sauvigne, known to most everyone as Art, has decided to retire from tha Veterans' Administration after 33 years of remarkable service. His most recent role has been as chief of staff at the VA Medical Center in White River Junction, VT. Although we have been assured that he will continue to treat veterans in a part-time capacity at the VA, I take this moment to honor him for his years of dedicated service.

Art began his VA career as a resident in internal medicine at Dartmouth-Hitchcock Medical Center. I like to think that Art's commitment to caring for veterans began with this residency because he has stayed with the VA in many different capacities ever since. Over the past 33 years he has held the following positions at the White River Junction VA: staff physician, associate chief of staff for ambulatory care, director of the emergency room, acting primary care service line manager, and acting specialty and acute care service line manager. Art became chief of staff in 1997.

In the time that my staff and I have known Art, we have been amazed at his breadth of medical and administrative knowledge and impressed by his vision. It seems that his ideas on improving service to veterans—especially veterans in rural areas—have, once implemented, served as national models. One needs only spend 10 minutes with Art to get the true sense of his passion for delivering service to veterans in their community. In fact, the White River Junction VA was a pioneer in his arena. Long before the Congressional mandate and establishment of the Community Based Outpatient Clinic, CBOC, a mobile clinic housed in a motor coach began seeing patients in 1989. In 1991, a small one-room clinic housed in the Burlington, VT, Vet Center became the predecessor of future CBOC's.

Art also has a firm belief that the VA, as a Government-run health care system, has a greater calling and higher need to provide excellence in care to its customers. He has long been involved in designing and implementing systems to improve customer services. Over the years, Art has actively endorsed and in many cases taken the lead in establishing standards of clinical practice, improving access, advancing types of services, and promoting the education of future health care providers.

Art's hard work was recognized when the White River Junction VA Medical Center was awarded the Veterans Health Administration's Robert W. Carey Organizational Excellence Award in 2002 and 2003 at the ''Achievement level.'' The White River Junction VA was awarded the Carey Award at the ''Trophy level'' in 2004 and was the ''Circle of Excellence'' winner in 2005. Art would tell you this recognition had little to do with him and everything to do with the incredible staff at the White River Junction VA, but I think his leadership made it a much easier journey.

Art's departure as chief of staff will leave a huge void. His indomitable spirit and limitless energy, even when faced by mind-numbing bureaucratic inertia, are irreplaceable. He will be hugely missed. However, we are grateful that he will still be caring for Vermont and New Hampshire veterans on a part-time basis in a role he still relishes—as a VA doctor.

My staff and I wish Art the very best in his well-deserved retirement. We also want to thank Art's wife Shirley and his family for sharing Art's time and energy with us through the years. I believe I can speak for all Vermont veterans when I say that we are deeply grateful to Art for making the VA health care system a more caring and professional place for veterans.●

TRIBUTE TO CAMERON McKINLEY

● Mr. SESSIONS. Mr. President, I would like to make some remarks today about Alabama's 2006–2007 Teacher of the Year, Ms. Cameron McKinley. Ms. McKinley has been a technology specialist for the Hoover City School System since she left her successful career as a businesswoman in the marketing field over 10 years ago to pursue her dream of teaching. Within the Hoover City School System, Ms. McKinley has taught computer education, instructional technology, and summer technology camps.

Ms. McKinley, a magna cum laude graduate of the University of Alabama with a bachelor's degree in corporate finance/investment management and marketing, is a national board certified teacher.

I would like to commend Ms. McKinley's efforts on behalf of her students, and sincerely congratulate her for this very high honor. I appreciate her dedication to educate our children, as we know that an investment in our children is one of the most important investments that we can make as a nation.

Ms. McKinley's decision to change careers to give her life to our children is a wonderful act and it is made all the more remarkable for being selected as Teacher of the Year. This is, indeed, a heartwarming story. With Ms. McKinley's help, and the aid of other teachers like her, we will continue to raise up quality leaders that will serve our country and our children in the years to come.●

MESSAGE FROM THE HOUSE

ENROLLED BILLS SIGNED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 4, 2005, the following enrolled bills, previously signed by the Speaker of the House, were signed on September 22, 2006, during the adjournment of the Senate, by the President pro tempore (Mr. STEVENS).

S. 260. An act to authorize the Secretary of the Interior to provide technical and financial assistance to private landowners to restore, enhance, and manage private land to improve fish and wildlife habitats through the Partners for Fish and Wildlife Program.

S. 418. An act to protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

S. 1025. An act to amend the Act entitled ''An Act to provide for the construction of the Cheney division, Wichita Federal reclamation project, Kansas, and for other purposes'' to authorize the Equus Beds Division of the Wichita Project.

H.R. 3408. An act to reauthorize the Livestock Mandatory Reporting Act of 1999 and to amend the swine reporting provisions of that Act.

H.R. 3858. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to ensure that State and local emergency preparedness operational plans address the needs of individuals with household pets and service animals following a major disaster or emergency.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 3630. A bill to amend the Federal Water Pollution Control Act to reauthorize a program relating to the Lake Pontchartrain Basin, and for other purposes.

S. 3925. A bill to provide certain authorities for the Secretary of State and the Broadcasting Board of Governors, and for other purposes.

S. 3929. A bill to authorize military commissions to bring terrorists to justice, to strengthen and modernize terrorist surveillance capabilities, and for other purposes.

S. 3930. A bill to authorize trial by military commission for violations of the law of war, and for other purposes.

S. 3931. A bill to establish procedures for the review of electronic surveillance programs.

ENROLLED BILLS PRESENTED

The Secretary of the Senate announced that on today, September 25, 2006, she had presented to the President of the United States the following enrolled bills:

S. 260. An act to authorize the Secretary of the Interior to provide technical and financial assistance to private landowners to restore, enhance, and manage private land to improve fish and wildlife habitats through the Partners for Fish and Wildlife Program.

S.418. An act to protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

S. 1025. An act to amend the Act entitled ''An Act to provide for the construction of the Cheney division, Wichita Federal reclamation project, Kansas, and for other purposes'' to authorize the Equus Beds Division of the Wichita Project.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–8403. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska'' (I.D. No. 082506D) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8404. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central and Western Regulatory Areas of the Gulf of Alaska'' (I.D. No. 081806A) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8405. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska'' (I.D. No. 082506A) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8406. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Temporary Rule; Inseason Bluefish Quota Transfer from Florida to New York'' (I.D. No. 081506B) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8407. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska'' (I.D. No. 082506C) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8408. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Temporary Rule; Closure (Closure of Quarter III Fishery for Loligo Squid)'' (I.D. No. 082806A) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8409. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska'' (I.D. No. 090106A) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8410. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area'' (I.D. No. 083006D) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8411. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska'' (I.D. No. 082906D) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8412. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Temporary Rule; Inseason Retention Limit Adjustment'' (I.D. No. 081006A) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8413. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Temporary Rule; Closure (Maine Summer Flounder Commercial Fishery)'' (I.D. No. 082406A) received on September 21, 2006; to the Committee on Commerce, Science, and Transportation.

EC–8414. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting, pursuant to law, a report relative to the Commission's inventory of commercial and inherently governmental activities for year 2006; to the Committee on Energy and Natural Resources.

EC–8415. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Implementation Plans; Utah; Revised Definitions of Volatile Organic Compounds and Clearing Index'' (FRL No. 8220–5) received on September 20, 2006; to the Committee on Environment and Public Works.

EC–8416. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, a report relative to the Agency's regulatory programs; to the Committee on Environment and Public Works.

EC–8417. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report relative to international agreements other than treaties that have been entered into; to the Committee on Foreign Relations.

EC–8418. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–8419. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–8420. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense article or defense services in the amount of $50,000,000 to Switzerland; to the Committee on Foreign Relations.

EC–8421. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a semiannual report detailing payments made to Cuba as a result of the provision of telecommunications services pursuant to specific licenses; to the Committee on Foreign Relations.

EC–8422. A communication from the Human Resources Specialist, Office of the Assistant Secretary for Administration and Management, Department of Labor, transmitting, pursuant to law, the designation of an acting officer and an action on a nomination for the position of Assistant Secretary for Mine and Safety Health, received on September 21, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–8423. A communication from the White House Liaison, Office of Planning, Evaluation and Policy Development, Department of Education, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary, received on September 21, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–8424. A communication from the White House Liaison, Office of Planning, Evaluation and Policy Development, Department of Education, transmitting, pursuant to law, the report of the designation of an acting officer for the position of Assistant Secretary, received on September 21, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–8425. A communication from the Deputy Director of Communications and Legislative Affairs, U.S. Equal Employment Opportunity Commission, transmitting, a draft of its Strategic Plan for Fiscal Years 2007–2012; to the Committee on Health, Education, Labor, and Pensions.

EC–8426. A communication from the Chairman, National Endowment for the Humanities, transmitting, pursuant to law, a report relative to FAIR Act inventories for Fiscal Year 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–8427. A communication from the Acting Executive Director, District of Columbia Retirement Board, transmitting, pursuant to law, the Board's annual report for fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–8428. A communication from the Deputy General Counsel and Designated Reporting Official, Office of National Drug Control Policy, Executive Office of the President, transmitting, a report supplementing information that was provided on August 9, 2005, relative to the nomination of Mr. James F. X. O'Gara to be the Deputy Director for Supply Reduction; to the Committee on the Judiciary.

EC–8429. A communication from the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Retail Sales of Scheduled Listed Chemical Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products'' (RIN1117–AB05) received on September 21, 2006; to the Committee on the Judiciary.

EC–8430. A communication from the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration, Department of Justice, transmitting, pursuant to law, a copy of an interim final rule with request for comment; to the Committee on the Judiciary.

EC–8431. A communication from the Assistant to the Secretary, Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Claims Based on Aggravation of a Nonservice-Connected Disability'' (RIN2900–AI42) received on September 21, 2006; to the Committee on Veterans' Affairs.

EC–8432. A communication from the Assistant to the Secretary, Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Schedule for Rating Disabilities; Guidelines for Application of Evaluation Criteria for Certain Respiratory and Cardiovascular Conditions; Evaluation of Hypertension With Heart Disease'' (RIN2900–AL26) received on September 21, 2006; to the Committee on Veterans' Affairs.

EC–8433. A communication from the Chief, Regulation Development, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''New and Material Evidence'' (RIN2900–AM15) received on September 21, 2006; to the Committee on Veterans' Affairs.

EC–8434. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of advance billing of a working capital fund customer; to the Committee on Armed Services.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–429. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to memorializing Congress to adopt and present to the states for ratification an amendment to the United States Constitution that would provide that only citizens may be counted for purposes of determining congressional representation among the states; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 97

Whereas, one of the cornerstones of our democratic republic is the decennial census, which is the basis for congressional representation and the apportionment process. The data gathered through the census is used to determine how the 435 members of the United States House of Representatives are divided among the states; and

Whereas, with growing numbers of illegal immigrants concentrated in a small number of states, especially California, states with few illegal immigrants suffer a commensurate reduction in the number of their members of the United States House of Representatives. This is true for Michigan, which has experienced a steady decline in congressional representation over the past few decades. Projections for the next reapportionment, after the 2010 census, include the loss of more seats for Michigan and other states with few illegal immigrants; and

Whereas, in 2000, an estimated 5.3 million noncitizens in California were counted by the Census Bureau. In one Californian district, more than 260,000 noncitizens, or 43 percent of the district's population, were tabulated, a ratio of almost four noncitizens for every voter. As a result, it took fewer than 35,000 votes to win the district compared to almost 100,000 votes to win a typical Congressional race in Michigan. If only legal citizens were counted, California would have been allocated six fewer seats in the House of Representatives. In addition, New York, Texas, and Florida, which along with California account for more than 50 percent of all noncitizens residing in the United States, would have been allocated one fewer Congressional seat apiece if only citizens were calculated; and

Whereas, while estimates of actual illegal aliens in our country are higher, the 2000 federal census found 7 million illegal aliens. It seems wrong for illegal aliens to have as profound an impact on our political environment as they presently do. While immigration is a very complex issue that must be addressed, it seems clear that including illegal immigrants in the calculation of congressional representation is wrong; and

Whereas, a measure has been introduced in the United States House of Representatives to propose an amendment to the United States Constitution that would provide that only citizens may be counted for purposes of apportioning congressional representation among the states. This legislation, H.J.R. 53, is long overdue; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to adopt and present to the states for ratification an amendment to the United States Constitution that would provide that only citizens may be counted for purposes of determining congressional representation among the states; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation. Adopted by the House of Representatives, September 6, 2006.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, with amendments:

S. 3879. A bill to implement the Convention on Supplementary Compensation for Nuclear Damage, and for other purposes (Rept. No. 109–346).

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 2348. A bill to amend the Atomic Energy Act of 1954 to require a licensee to notify the Atomic Energy Commission, and the State and county in which a facility is located, whenever there is an unplanned release of fission products in excess of allowable limits (Rept. No. 109–347).

By Mr. ENZI, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 3771. A bill to amend the Public Health Service Act to provide additional authorizations of appropriations for the health centers program under section 330 of such Act.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of a nomination was submitted:

By Mr. STEVENS for the Committee on Commerce, Science, and Transportation.

*Mary E. Peters, of Arizona, to be Secretary of Transportation.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. FEINGOLD:

S. 3932. A bill to limit the amount of funds available to the Aerobatics Research Mission Directorate of the National Aeronautics and Space Administration during fiscal year 2007 and fiscal years thereafter; to the Committee on Commerce, Science, and Transportation.

By Mr. INHOFE:

S. 3933. A bill to extend the generalized system of preferences; to the Committee on Finance.

By Ms. SNOWE:

S. 3934. A bill to terminate authorization for the project for navigation, Rockport Harbor, Maine; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. REID (for Mr. INOUYE):

S. Res. 582. A resolution urging the people of the United States to observe Global Family Day and One Day of Peace and Sharing; considered and agreed to.

By Mr. STEVENS (for himself, Ms. MURKOWSKI, Mr. AKAKA, Mr. DEWINE, Mr. FEINGOLD, Mr. DOMENICI, and Mr. CHAMBLISS):

S. Res. 583. A resolution designating September 2006 as ''National Youth Court Month''; considered and agreed to.

By Mr. FRIST (for himself and Mr. REID):

S. Res. 584. A resolution to authorize the production of records, testimony, and legal representation; considered and agreed to.

By Mr. COBURN:

S. Con. Res. 118. A concurrent resolution expressing the sense of the Congress that, as a matter of economic and national security, the United States Government should protect and support United States currency; to the Committee on Banking, Housing, and Urban Affairs.

ADDITIONAL COSPONSORS

S. 241

At the request of Ms. SNOWE, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 241, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

S. 334

At the request of Mr. DORGAN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 334, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

S. 381

At the request of Mr. SMITH, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 381, a bill to amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments.

S. 503

At the request of Mr. BOND, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 503, a bill to expand Parents as Teachers programs and other quality programs of early childhood home visitation, and for other purposes.

S. 559

At the request of Mr. BIDEN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 559, a bill to make the protection of vulnerable populations, especially women and children, who are affected by a humanitarian emergency a priority of the United States Government, and for other purposes.

S. 908

At the request of Mr. MCCONNELL, the names of the Senator from Idaho (Mr. CRAIG), the Senator from Texas (Mrs. HUTCHISON) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 965

At the request of Mr. SMITH, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 965, a bill to amend the Internal Revenue Code of 1986 to reduce the recognition period for built-in gains for subchapter S corporations.

S. 1013

At the request of Mrs. FEINSTEIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1013, a bill to improve the allocation of grants through the Department of Homeland Security, and for other purposes.

S. 1082

At the request of Mrs. HUTCHISON, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 1082, a bill to restore Second Amendment rights in the District of Columbia.

S. 1172

At the request of Mr. SPECTER, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1915

At the request of Mr. ENSIGN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1915, a bill to amend the Horse Protection Act to prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.

S. 2154

At the request of Mr. OBAMA, the names of the Senator from Maryland (Mr. SARBANES), the Senator from North Carolina (Mrs. DOLE), the Senator from Ohio (Mr. VOINOVICH), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

S. 2284

At the request of Ms. MIKULSKI, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2284, a bill to extend the termination date for the exemption of returning workers from the numerical limitations for temporary workers.

S. 2348

At the request of Mr. INHOFE, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. 2348, a bill to amend the Atomic Energy Act of 1954 to require a licensee to notify the Atomic Energy Commission, and the State and county in which a facility is located, whenever there is an unplanned release of fission products in excess of allowable limits.

S. 2491

At the request of Mr. CORNYN, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Kansas (Mr. BROWNBACK), the Senator from Montana (Mr. BURNS), the Senator from Kansas (Mr. ROBERTS), the Senator from Utah (Mr. BENNETT) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 2491, a bill to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

S. 2493

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2493, a bill to provide for disclosure of fire safety standards and measures with respect to campus buildings, and for other purposes.

S. 3421

At the request of Mr. CRAIG, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 3421, a bill to authorize major medical facility projects and major medical facility leases for the Department of Veterans Affairs for fiscal years 2006 and 2007, and for other purposes.

S. 3519

At the request of Mr. HATCH, the name of the Senator from Ohio (Mr.

DEWINE) was added as a cosponsor of S. 3519, a bill to reform the State inspection of meat and poultry in the United States, and for other purposes.

S. 3596

At the request of Mr. HAGEL, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 3596, a bill to amend the Internal Revenue Code of 1986 to provide a credit to certain concentrated animal feeding operations for the cost of complying with environmental protection regulations.

S. 3681

At the request of Mr. DOMENICI, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 3681, a bill to amend the Comprehensive Environmental Response Compensation and Liability Act of 1980 to provide that manure shall not be considered to be a hazardous substance, pollutant, or contaminant.

S. 3705

At the request of Mr. KENNEDY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 3705, a bill to amend title XIX of the Social Security Act to improve requirements under the Medicaid program for items and services furnished in or through an educational program or setting to children, including children with developmental, physical, or mental health needs, and for other purposes.

S. 3744

At the request of Mr. DURBIN, the names of the Senator from Florida (Mr. NELSON) and the Senator from Illinois (Mr. OBAMA) were added as cosponsors of S. 3744, a bill to establish the Abraham Lincoln Study Abroad Program.

S. 3771

At the request of Mr. HATCH, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Kansas (Mr. ROBERTS) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. 3771, a bill to amend the Public Health Service Act to provide additional authorizations of appropriations for the health centers program under section 330 of such Act.

S. 3795

At the request of Mr. SMITH, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 3795, a bill to amend title XVIII of the Social Security Act to provide for a two-year moratorium on certain Medicare physician payment reductions for imaging services.

At the request of Mr. ROCKEFELLER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 3795, supra.

S. 3827

At the request of Mrs. LINCOLN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 3827, a bill to amend the Internal Revenue Code of 1986 to extend and expand the benefits for businesses operating in empowerment zones, enterprise communities, or renewal communities, and for other purposes.

S. 3855

At the request of Mr. CONRAD, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 3855, a bill to provide emergency agricultural disaster assistance, and for other purposes.

S. 3877

At the request of Mrs. FEINSTEIN, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 3877, a bill entitled the ''Foreign Intelligence Surveillance Improvement and Enhancement Act of 2006''.

S. 3879

At the request of Mr. INHOFE, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 3879, a bill to implement the Convention on Supplementary Compensation for Nuclear Damage, and for other purposes.

S. 3884

At the request of Mr. LUGAR, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 3884, a bill to impose sanctions against individuals responsible for genocide, war crimes, and crimes against humanity, to support measures for the protection of civilians and humanitarian operations, and to support peace efforts in the Darfur region of Sudan, and for other purposes.

S. 3912

At the request of Mr. ENSIGN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 3912, a bill to amend title XVIII of the Social Security Act to extend the exceptions process with respect to caps on payments for therapy services under the Medicare program.

S. 3913

At the request of Mr. ROCKEFELLER, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from Illinois (Mr. DURBIN) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 3913, a bill to amend title XXI of the Social Security Act to eliminate funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007.

S. CON. RES. 72

At the request of Mr. INOUYE, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. Con. Res. 72, a concurrent resolution requesting the President to issue a proclamation annually calling upon the people of the United States to observe Global Family Day, One Day of Peace and Sharing, and for other purposes.

S. CON. RES. 84

At the request of Mr. KYL, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. Con. Res. 84, a concurrent resolution expressing the sense of Congress regarding a free trade agreement between the United States and Taiwan.

S. RES. 559

At the request of Mr. BIDEN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. Res. 559, a resolution calling on the President to take immediate steps to help stop the violence in Darfur.

S. RES. 572

At the request of Mr. BURNS, the names of the Senator from Oklahoma (Mr. INHOFE), the Senator from Oregon (Mr. SMITH), the Senator from California (Mrs. BOXER), the Senator from Georgia (Mr. ISAKSON), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Utah (Mr. BENNETT), the Senator from Virginia (Mr. ALLEN) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. Res. 572, a resolution expressing the sense of the Senate with respect to raising awareness and enhancing the state of computer security in the United States, and supporting the goals and ideals of National Cyber Security Awareness Month.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD:

S. 3932. A bill to limit the amount of funds available to the Aerobatics Research Mission Directorate of the National Aeronautics and Space Administration during fiscal year 2007 and fiscal years thereafter; to the Committee on Commerce, Science, and Transportation.

Mr. FEINGOLD. Mr. President, I rise today to introduce a bill that would limit the amount of funds available to the Aeronautics Research Mission Directorate (ARMD) of the National Aeronautics and Space Administration. We must ensure that U.S. taxpayer money is being used efficiently and effectively, and this measure would help in our ongoing efforts to streamline government programs and reduce the Federal budget deficit.

My bill proposes to reduce the amount of funding for the ARMD from its 2006 level of $884 million to $724 million for fiscal years 2007 and thereafter. This represents a savings of $160 million per year, or $800 million over five years. This funding reduction reflects the President's own budget priorities; in fact, the $724 million figure comes from the President's 2007 budget savings proposal. NASA is in the process of restructuring and reprioritizing, and the ARMD is a directorate that has been identified as an area where savings could be achieved. In the past, some of the ARMD's aeronautics work focused on developing technologies that could have short-term commercial applications in the air transportation industry. This is work that could be more appropriately taken on by the

private sector, and does not require such a massive investment from the Federal Government.

This bill should not be read to imply that the work of the ARMD is not important. To the contrary, aeronautics research is perhaps some of the most directly relevant work to many Americans that NASA is involved in. This bill simply follows up on the President's call for the ARMD to focus its research efforts in the areas that are most appropriate. By refocusing on long-term fundamental aeronautics research, safety research, and ways to address the needs of the future air transportation system, ARMD should be able to operate effectively and efficiently under this spending cap.

One of the main reasons I first ran for the U.S. Senate was to restore fiscal responsibility to the Federal budget. I have continued to work to eliminate wasteful spending and to reduce the soaring budget deficit, which is now estimated at $300 billion this year. Unless we return to fiscally responsible budgeting, Congress will saddle our Nation's younger generations with an enormous financial burden for years to come. This bill is one small step in that direction.

By Mr. INHOFE:

S. 3933. A bill to extend the generalized system of preferences; to the Committee on Finance.

Mr. INHOFE. Mr. President, I rise today to introduce legislation that will reauthorize a vital trade and development program—the Generalized System of Preferences (GSP). This is a program I have worked to reauthorize in the past, and I think it is a vital program for both developing countries and the American economy. As someone who frequently works to assist those who face the direst of circumstances in the poor countries of Sub-Saharan Africa, I feel that we must reauthorize this program as a key component of our efforts there.

The GSP program is an effort of the United States and 19 other industrialized countries to aid developing countries through increased market access, which in turn fosters industrial development and enhanced opportunities for prosperity in some of the least-advantaged countries in the world. This program allows a specified list of developing countries, from the Asian Continent to Sub-Saharan Africa to Latin America, to export certain products duty-free to the U.S. market. A beneficiary country's GSP treatment is contingent upon that country's commitment to securing intellectual property rights and to protecting the rights of workers. In this way, the GSP program promotes the development of sound practices and institutions in those countries with which we are engaged in trade and thus fulfills some important objectives of U.S. trade policy. In sum, the GSP program promotes self-sustaining production development in developing countries—not dependence on foreign aid—and also encourages respect for human dignity and property.

While originally developed as a trade program to aid developing countries, GSP over the past 32 years has become an important component of the U.S. economy. American consumers enjoy lower prices on diverse products from oil to flashlights to broomhandles to cheese. Furthermore, numerous American small businesses retain their competitive advantage from the duty-free treatment of essential inputs, such as electrical equipment and automotive parts. American small businesses need every cost-cutting edge available to them in order to continue to create jobs and value. I first took an interest in the reauthorization of this program when a small business in Oklahoma that used GSP-covered drilling components to support domestic energy enhancement contacted my office and explained how failure to reauthorize GSP would seriously affect his business. After which, upon understanding how much this program also assists those in developing countries, its reauthorization became a priority for me. Very clearly, although designed to make other less-advantaged countries more competitive, GSP has contributed to our continued competitiveness here in the United States.

Workers, consumers, and businesses in nearly 120 countries including our own will benefit from the continuation of this program, which affects the price of over 5,600 finished and unfinished goods. Therefore, I ask that you join me in reauthorizing the Generalized System of Preferences.

By Ms. SNOWE:

S. 3934. A bill to terminate authorization for the project for navigation, Rockport Harbor, Maine; to the Committee on Environment and Public Works.

Ms. SNOWE. Mr. President, I am introducing a bill today for the Town of Rockport that would deauthorize a part of the Federal Navigation Channel in Rockport Harbor. The town, located on the active Mid-Coast of Maine, requested shortly after the Senate passed the Water Resources Development Act of 2006 that Congress decommission a 35-foot by 275-foot area directly adjacent to the bulkhead at Marine Park. With this deauthorization, the Town will be able to install permanent pilings to secure a set of new municipal floats, which would replace the current temporary float system.

It is my hope that this non-controversial provision will be included in the Water Resources Development Act of 2006 conference report rather than have the Town of Rockport have to wait possibly for years before another WRDA bill is considered. I urge my Senate conferees for the WRDA conference to include this language that was drafted by the New England Corps of Engineers who have no objection to the deauthorization.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 582—URGING THE PEOPLE OF THE UNITED STATES TO OBSERVE GLOBAL FAMILY DAY AND ONE DAY OF PEACE AND SHARING

Mr. REID (for Mr. INOUYE) submitted the following resolution; which was considered and agreed to:

S. RES. 582

Whereas in 2005, the people of the world suffered many calamitous events, including devastation from tsunamis, terror attacks, wars, famines, genocides, hurricanes, earthquakes, political and religious conflicts, diseases, poverty, and rioting, all necessitating global cooperation, compassion, and unity previously unprecedented among diverse cultures, faiths, and economic classes;

Whereas grave global challenges in 2006 may require cooperation and innovative problem-solving among citizens and nations on an even greater scale;

Whereas, on December 15, 2000, Congress adopted Senate Concurrent Resolution 138, expressing the sense of Congress that the President of the United States should issue a proclamation each year calling upon the people of the United States and interested organizations to observe an international day of peace and sharing at the beginning of each year;

Whereas, in 2001, the United Nations General Assembly adopted Resolution 56/2, which invited ''Member States, intergovernmental and non-governmental organizations and all the peoples of the world to celebrate One Day in Peace, 1 January 2002, and every year thereafter'';

Whereas many foreign heads of State have recognized the importance of establishing Global Family Day, a special day of international unity, peace, and sharing, on the first day of each year; and

Whereas family is the basic structure of humanity, thus, we must all look to the stability and love within our individual families to create stability in the global community: Now therefore, be it

Resolved, That the Senate urgently requests—

(1) the people of the United States to observe Global Family Day and One Day of Peace and Sharing with appropriate activities stressing the need—

(A) to eradicate violence, hunger, poverty, and suffering; and

(B) to establish greater trust and fellowship among peace-loving countries and families everywhere; and

(2) that American businesses, labor organizations, and faith and civic leaders are urged to join in promoting appropriate activities for Americans and in extending appropriate greetings from the families of America to families in the rest of the world.

SENATE RESOLUTION 583—DESIGNATING SEPTEMBER 2006 AS ''NATIONAL YOUTH COURT MONTH''

Mr. STEVENS (for himself, Ms. MURKOWSKI, Mr. AKAKA, Mr. DEWINE, Mr. FEINGOLD, Mr. DOMENICI, and Mr. CHAMBLISS) submitted the following resolution, which was considered and agreed to:

S. RES. 583

Whereas a strong country begins with strong communities in which all citizens

play an active role and invest in the success and future of the youth of the United States;

Whereas the fifth National Youth Court Month celebrates the outstanding achievement of youth courts throughout the country;

Whereas in 2005, more than 110,000 youths volunteered to hear more than 115,000 juvenile cases, and more than 20,000 adults volunteered to facilitate peer justice in youth court programs;

Whereas 1,158 youth court programs in 49 States and the District of Columbia provide restorative justice for juvenile offenders, resulting in effective crime prevention, early intervention and education for all youth participants, and enhanced public safety throughout the United States;

Whereas, by holding juvenile offenders accountable, reconciling victims, communities, juvenile offenders, and their families, and reducing caseloads for the juvenile justice system, youth courts address offenses that might otherwise go unaddressed until the offending behavior escalates and redirects the efforts of juvenile offenders toward becoming contributing members of their communities;

Whereas Federal, State, and local governments, corporations, foundations, service organizations, educational institutions, juvenile justice agencies, and individual adults support youth courts because youth court programs actively promote and contribute to building successful, productive lives and futures for the youth of the United States;

Whereas a fundamental correlation exists between youth service and lifelong adult commitment to and involvement in one's community;

Whereas volunteer service and related service learning opportunities enable young people to build character and develop and enhance life-skills, such as responsibility, decision-making, time management, teamwork, public speaking, and leadership, which prospective employers will value; and

Whereas participating in youth court programs encourages youth court members to become valuable members of their communities: Now, therefore, be it

Resolved, That the Senate designates September 2006 as ''National Youth Court Month''.

SENATE RESOLUTION 584—TO AUTHORIZE THE PRODUCTION OF RECORDS, TESTIMONY, AND LEGAL REPRESENTATION

Mr. FRIST (for himself and Mr. REID) submitted the following resolution; which was considered and agreed to:

S. RES. 584

Whereas, the United States Attorney's Office for the District of Columbia is conducting an investigation of the financial disclosures made by Dr. Lester Crawford to the Committee on Health, Education, Labor, and Pensions in connection with confirmation proceedings on Dr. Crawford's nomination to be Commissioner of the Food and Drug Administration;

Whereas, the Committee on Health, Education, Labor, and Pensions has received a request from the United States Attorney's Office for testimony of three employees of the Committee and for records of the Committee relevant to the investigation;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate; and

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Committee on Health, Education, Labor, and Pensions is authorized to produce documents and committee staff are authorized to testify in these and related proceedings, except where a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent employees of the Committee on Health, Education, Labor, and Pensions in connection with the document production and testimony authorized in section one of this resolution.

SENATE CONCURRENT RESOLUTION 118—EXPRESSING THE SENSE OF THE CONGRESS THAT, AS A MATTER OF ECONOMIC AND NATIONAL SECURITY, THE UNITED STATES GOVERNMENT SHOULD PROTECT AND SUPPORT UNITED STATES CURRENCY

Mr. COBURN submitted the following concurrent resolution; which was referred to the Committee on Banking, Housing, and Urban Affairs:

S. CON. RES. 118

Whereas the United States dollar, as the world's reserve currency, is one of our country's greatest assets;

Whereas the strength and integrity of the United States dollar provides the United States with economic stability and national security;

Whereas any threat or change to the status of the dollar as a world reserve currency would be costly to the United States Treasury and could cause national economic instability;

Whereas international counterfeiting of the dollar is on the rise and currency counterfeiting has reportedly been used to finance rogue governments and terrorism;

Whereas on January 26, 2006, President Bush made a strong commitment to protect the currency of the United States from counterfeiting by the North Korean regime or any other adversarial regime or organization; and

Whereas every dollar issued by the United States Government is meant to be representative of the strength and solidarity of this great nation: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that, as a matter of economic and national security, the United States Government should provide the currency of the United States with the protection and support necessary to defend its integrity throughout the world, effectively deter counterfeiting, and preserve the status of the dollar as the world's reserve currency.

AMENDMENTS SUBMITTED & PROPOSED

SA 5036. Mr. FRIST proposed an amendment to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States.

SA 5037. Mr. FRIST proposed an amendment to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra.

SA 5038. Mr. FRIST proposed an amendment to the bill H.R. 6061, supra.

SA 5039. Mr. FRIST proposed an amendment to amendment SA 5038 proposed by Mr. FRIST to the bill H.R. 6061, supra.

SA 5040. Mr. FRIST proposed an amendment to amendment SA 5039 proposed by Mr. FRIST to the amendment SA 5038 proposed by Mr. FRIST to the bill H.R. 6061, supra.

TEXT OF AMENDMENTS

SA 5036. Mr. FRIST proposed an amendment to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; as follows:

On page 7 line 10, after ''Subsection (A)'', insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Military Commissions Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS.

The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

SEC. 3. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

''CHAPTER 47A—MILITARY COMMISSIONS

''SUBCHAPTER I—GENERAL PROVISIONS

"§ 948a. Definitions

''In this chapter:

''(1) UNLAWFUL ENEMY COMBATANT.—(A) The term 'unlawful enemy combatant' means—

''(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

''(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

''(B) CO-BELLIGERENT.—In this paragraph, the term 'co-belligerent', with respect to the United States, means any State or armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy.

''(2) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means a person who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(3) ALIEN.—The term 'alien' means a person who is not a citizen of the United States.

''(4) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(5) GENEVA CONVENTIONS.—The term 'Geneva Conventions' means the international conventions signed at Geneva on August 12, 1949.

"§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

''(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided in this chapter. The judicial construction and application of that chapter are not binding on military commissions established under this chapter.

''(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by this chapter.

''(e) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''(f) STATUS OF COMMISSIONS UNDER COMMON ARTICLE 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions.

''(g) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.

"§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant is subject to trial by military commission under this chapter.

"§ 948d. Jurisdiction of military commissions

''(a) JURISDICTION.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

''(b) LAWFUL ENEMY COMBATANTS.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

''(c) DETERMINATION OF UNLAWFUL ENEMY COMBATANT STATUS DISPOSITIVE.—A finding, whether before, on, or after the date of the enactment of the Military Commissions Act of 2006, by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense that a person is an unlawful enemy combatant is dispositive for purposes of jurisdiction for trial by military commission under this chapter.

''(d) PUNISHMENTS.—A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter or the law of war.

"§ 948e. Annual report to congressional committees

''(a) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions under this chapter during such year.

''(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.

"§ 948h. Who may convene military commissions

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

"§ 948i. Who may serve on military commissions

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members of the commission such members of the armed forces eligible under subsection (a), as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

"§ 948j. Military judge of a military commission

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) QUALIFICATIONS.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed

to a military commission under this chapter may not consult with the members of the commission except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members of the commission.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

''§ 948k. Detail of trial counsel and defense counsel

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing of charges against the accused.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice) who—

''(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who—

''(A) is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

''§ 948l. Detail or employment of reporters and interpreters

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the commission qualified court reporters, who shall make a verbatim recording of the proceedings of and testimony taken before the commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the commission and, as necessary, for trial counsel and defense counsel and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the commission, who shall also be responsible for preparing the record of the proceedings.

''§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''§ 948q. Charges and specifications

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of the signer's knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges against him as soon as practicable.

''§ 948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) EXCLUSION OF STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence that the statement was made.

''(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value;

''(2) the interests of justice would best be served by admission of the statement into evidence; and

''(3) the interrogation methods used to obtain the statement do not violate the cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

''§ 948s. Service of charges

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had. Such charges shall be served in English and, if appropriate, in another language that the accused understands. Such service shall be made sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense, in consultation with the Attorney General. Such procedures shall, so far as the Secretary considers practicable or consistent with military or intelligence activities, apply the principles of law and the rules of evidence in trial by general courts-martial. Such procedures and rules of evidence may not be contrary to or inconsistent with this chapter.

''(b) RULES FOR MILITARY COMMISSION.—(1) Notwithstanding any departures from the law and the rules of evidence in trial by general courts-martial authorized by subsection (a), the procedures and rules of evidence in trials by military commission under this chapter shall include the following:

''(A) The accused shall be permitted to present evidence in his defense, to cross-examine the witnesses who testify against him, and to respond to evidence admitted against him on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

''(B) The accused shall be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) The accused shall receive the assistance of counsel as provided for by section 948k.

''(D) The accused shall be permitted to represent himself, as provided for by paragraph (3).

''(2) In establishing procedures and rules of evidence for military commission proceedings, the Secretary of Defense may prescribe the following provisions:

''(A) Evidence shall be admissible if the military judge determines that the evidence would have probative value to a reasonable person.

''(B) Evidence shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or other authorization.

''(C) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

''(D) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient basis to find that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(E)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under the preceding sentence is subject to the requirements and limitations applicable to the disclosure of classified information in section 949j(c) of this title.

''(ii) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial shall not be admitted in a trial by military commission if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value.

''(F) The military judge shall exclude any evidence the probative value of which is substantially outweighed—

''(i) by the danger of unfair prejudice, confusion of the issues, or misleading the commission; or

''(ii) by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (1)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (1)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''(d) NOTIFICATION TO CONGRESSIONAL COMMITTEES OF CHANGES TO PROCEDURES.—Not later than 60 days before the date on which any proposed modification of the procedures in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the modification.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or his functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to his judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) Paragraphs (1) and (2) do not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, but only if such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to classified information that is classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information and may not divulge such information to any person not authorized to receive it.

''(5) If the accused is represented by civilian counsel, military counsel detailed shall act as associate counsel.

''(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in that person's sole discretion, may detail additional military counsel to represent the accused.

''(7) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (c) and (e), any proceedings under paragraph (1) shall—

''(A) be conducted in the presence of the accused, defense counsel, and trial counsel; and

''(B) be made part of the record.

''(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—Except as provided in subsections (c) and (e), all proceedings of a military commission under this chapter, including any consultation of the members with the military judge or counsel, shall—

''(1) be in the presence of the accused, defense counsel, and trial counsel; and

''(2) be made a part of the record.

''(c) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(d) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter, but only in accordance with this subsection.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(e) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''(f) PROTECTION OF CLASSIFIED INFORMATION.—

''(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. The rule in the preceding sentence applies to all stages of the proceedings of military commissions under this chapter.

''(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

''(i) the information is properly classified; and

''(ii) disclosure of the information would be detrimental to the national security.

''(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

''(A) ALTERNATIVES TO DISCLOSURE.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

''(B) PROTECTION OF SOURCES, METHODS, OR ACTIVITIES.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

''(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel's claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

''(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military commissions under this chapter. A report on any regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days before the date on which such regulations or modifications, as the case may be, go into effect.

''§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

''§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the commission. The military judge shall determine the relevance and validity of challenges for cause. The military judge may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—Each accused and the trial counsel are entitled to one peremptory challenge. The military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

''§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary of Defense. Those regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

''§ 949i. Pleas of the accused

''(a) ENTRY OF PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

"§ 949j. Opportunity to obtain witnesses and other evidence

''(a) RIGHT OF DEFENSE COUNSEL.—Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(b) PROCESS FOR COMPULSION.—Process issued in a military commission under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(1) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(2) shall run to any place where the United States shall have jurisdiction thereof.

''(c) PROTECTION OF CLASSIFIED INFORMATION.—(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(A) the deletion of specified items of classified information from documents to be made available to the accused;

''(B) the substitution of a portion or summary of the information for such classified documents; or

''(C) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

''(d) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (c).

''(2) In this subsection, the term 'evidence known to trial counsel', in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by general court-martial under chapter 47 of this title.

"§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members of the commission as to the defense of lack of mental responsibility under this section and shall charge them to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

"§ 949l. Voting and rulings

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

"§ 949m. Number of votes required

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) No person may be sentenced by a military commission to suffer death, except insofar as—

''(A) the penalty of death is expressly authorized under this chapter or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused is convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all the members present at the time the vote is taken concur in the sentence of death.

''(2) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(3) All other sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with not fewer than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

"§ 949n. Military commission to announce action

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

"§ 949o. Record of trial

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall be given a redacted version of the record consistent with the requirements of section 949d of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

"§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

"§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

"§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a

sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Appellate referral; waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by Court of Military Commission Review.
''950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court.
''950h. Appellate counsel.
''950i. Execution of sentence; procedures for execution of sentence of death.
''950j. Finality or proceedings, findings, and sentences.

''§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

''§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been given an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action on the sentence under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(3) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, may—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

''§ 950c. Appellate referral; waiver or withdrawal of appeal

''(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided under subsection (b), in each case in which the final decision of a military commission (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

''(b) WAIVER OF RIGHT OF REVIEW.—(1) In each case subject to appellate review under section 950f of this title, except a case in which the sentence as approved under section 950b of this title extends to death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice on the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(d) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

''§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (d), (e), or (f) of section 949d of this title or section 949j(c) of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of such order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the Court of Military Commission Review. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''(d) APPEAL FROM ADVERSE RULING.—The United States may appeal an adverse ruling on an appeal under subsection (c) to the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in the Court of Appeals within 10 days after the date of such ruling. Review under this subsection shall be at the discretion of the Court of Appeals.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

''§ 950f. Review by Court of Military Commission Review

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Court of Military Commission Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

''(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may be serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

''(c) CASES TO BE REVIEWED.—The Court of Military Commission Review, in accordance with procedures prescribed under regulations of the Secretary, shall review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter of law raised by the accused.

''(d) SCOPE OF REVIEW.—In a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.

''§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court

''(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A) Except as provided in subparagraph (B), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority) under this chapter.

''(B) The Court of Appeals may not review the final judgment until all other appeals under this chapter have been waived or exhausted.

''(2) A petition for review must be filed by the accused in the Court of Appeals not later than 20 days after the date on which—

''(A) written notice of the final decision of the Court of Military Commission Review is served on the accused or on defense counsel; or

''(B) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.

''(b) STANDARD FOR REVIEW.—In a case reviewed by it under this section, the Court of Appeals may act only with respect to matters of law.

''(c) SCOPE OF REVIEW.—The jurisdiction of the Court of Appeals on an appeal under subsection (a) shall be limited to the consideration of—

''(1) whether the final decision was consistent with the standards and procedures specified in this chapter; and

''(2) to the extent applicable, the Constitution and the laws of the United States.

''(d) SUPREME COURT.—The Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals pursuant to section 1257 of title 28.

''§ 950h. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for counsel appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

''(1) shall represent the United States in any appeal or review proceeding under this chapter before the Court of Military Commission Review; and

''(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (4) of that section.

''§ 950i. Execution of sentence; procedures for execution of sentence of death

''(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

''(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and—

''(i) a petition for a writ of certiorari is not timely filed;

''(ii) such a petition is denied by the Supreme Court; or

''(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(d) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

''§ 950k. Finality or proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950p. Statement of substantive offenses.
''950q. Principals.
''950r. Accessory after the fact.
''950s. Conviction of lesser included offense.
''950t. Attempts.
''950u. Solicitation.
''950v. Crimes triable by military commissions.
''950w. Perjury and obstruction of justice; contempt.

''§ 950p. Statement of substantive offenses

''(a) PURPOSE.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

''§ 950q. Principals

''Any person is punishable as a principal under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

''(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

''§ 950r. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this

chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

"§ 950s. Conviction of lesser included offense

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

"§ 950t. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

"§ 950u. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

"§ 950v. Crimes triable by military commissions

''(a) DEFINITIONS AND CONSTRUCTION.—In this section:

''(1) MILITARY OBJECTIVE.—The term 'military objective' means—

''(A) combatants; and

''(B) those objects during an armed conflict—

''(i) which, by their nature, location, purpose, or use, effectively contribute to the opposing force's war-fighting or war-sustaining capability; and

''(ii) the total or partial destruction, capture, or neutralization of which would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.

''(2) PROTECTED PERSON.—The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including—

''(A) civilians not taking an active part in hostilities;

''(B) military personnel placed hors de combat by sickness, wounds, or detention; and

''(C) military medical or religious personnel.

''(3) PROTECTED PROPERTY.—The term 'protected property' means property specifically protected by the law of war (such as buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, or places where the sick and wounded are collected), if such property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(4) CONSTRUCTION.—The intent specified for an offense under paragraph (1), (2), (3), (4), or (12) of subsection (b) precludes the applicability of such offense with regard to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(b) OFFENSES.—The following offenses shall be triable by military commission under this chapter at any time without limitation:

''(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(2) ATTACKING CIVILIANS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''(4) ATTACKING PROTECTED PROPERTY.—Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''(5) PILLAGING.—Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(8) EMPLOYING POISON OR SIMILAR WEAPONS.—Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(9) USING PROTECTED PERSONS AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

''(11) TORTURE.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(12) CRUEL OR INHUMAN TREATMENT.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) DEFINITIONS.—In this paragraph:

''(i) The term 'serious physical pain or suffering' means bodily injury that involves—

''(I) a substantial risk of death;

''(II) extreme physical pain;

''(III) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(IV) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

''(ii) The term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(iii) The term 'serious mental pain or suffering' has the meaning given the term 'severe mental pain or suffering' in section 2340(2) of title 18, except that—

''(I) the term 'serious' shall replace the term 'severe' where it appears; and

''(II) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

''(A) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term 'serious bodily injury' means bodily injury which involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) protracted and obvious disfigurement; or

''(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''(14) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(15) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(16) DESTRUCTION OF PROPERTY IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

''(17) USING TREACHERY OR PERFIDY.—Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(18) IMPROPERLY USING A FLAG OF TRUCE.—Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

''(19) IMPROPERLY USING A DISTINCTIVE EMBLEM.—Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

''(20) INTENTIONALLY MISTREATING A DEAD BODY.—Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessity, shall be punished as a military commission under this chapter may direct.

''(21) RAPE.—Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

''(22) SEXUAL ASSAULT OR ABUSE.—Any person subject to this chapter who forcibly or with coercion or threat of force engages in sexual contact with one or more persons, or causes one or more persons to engage in sexual contact, shall be punished as a military commission under this chapter may direct.

''(23) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(24) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—

''(A) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(B) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this paragraph, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

''(26) WRONGFULLY AIDING THE ENEMY.—Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

''(27) SPYING.—Any person subject to this chapter who with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(28) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950w. Perjury and obstruction of justice; contempt

''(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to military commissions under this chapter.

''(b) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''47A. Military Commissions ..... 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY JUSTICE.

(a) CONFORMING AMENDMENTS.—Chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) APPLICABILITY TO LAWFUL ENEMY COMBATANTS.—Section 802(a) (article 2(a)) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.''.

(2) EXCLUSION OF APPLICABILITY TO CHAPTER 47A COMMISSIONS.—Sections 821, 828, 848, 850(a), 904, and 906 (articles 21, 28, 48, 50(a), 104, and 106) are amended by adding at the end the following new sentence: ''This section does not apply to a military commission established under chapter 47A of this title.''.

(3) INAPPLICABILITY OF REQUIREMENTS RELATING TO REGULATIONS.—Section 836 (article 36(b)) is amended—

(A) in subsection (a), by inserting '', except as provided in chapter 47A of this title,'' after ''but which may not''; and

(B) in subsection (b), by inserting before the period at the end '', except insofar as applicable to military commissions established under chapter 47A of this title''.

(b) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

(2) by adding at the end the following new subsection:

''(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who

knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva Conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—

(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) DEFINITIONS.—In this subsection:

(A) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) THIRD GENEVA CONVENTION.—The term ''Third Geneva Convention'' means the international convention referred to in subparagraph (A)(iii).

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

(B) by adding at the end the following new subsection:

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

''(D) the term 'serious physical pain or suffering' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

''(E) the term 'serious mental pain or suffering' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term 'severe mental pain or suffering' (as defined in section 2340(2) of this title), except that—

''(i) the term 'serious' shall replace the term 'severe' where it appears; and

''(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.''.

(2) RETROACTIVE APPLICABILITY.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Public Law 107–273).

(c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this subsection, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

SEC. 7. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742) and the subsection (e) added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477) and inserting the following new subsection (e):

''(e)(1) 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 detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005 RELATING TO PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.

(a) COUNSEL AND INVESTIGATIONS.—Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection''.

(b) PROTECTION OF PERSONNEL.—Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution that—

(1) relates to the detention and interrogation of aliens described in such section;

(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

(3) relates to actions occurring between September 11, 2001, and December 30, 2005.

SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.

Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(1) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(3) in subparagraph (C)—

(A) in clause (i)—

(i) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(ii) by striking ''at Guantanamo Bay, Cuba''; and

(B) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(4) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''

SA 5037. Mr. FRIST proposed an amendment to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; as follows:

At the end of the amendment, add the following:

This Act shall become effective 1 day after the date of enactment.

SA 5038. Mr. FRIST proposed an amendment to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States, as follows:

On page 7 line 10, after ''Subsection (A)'', insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Military Commissions Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS.

The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

SEC. 3. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

''CHAPTER 47A—MILITARY COMMISSIONS

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 948a. Definitions

''In this chapter:

''(1) UNLAWFUL ENEMY COMBATANT.—(A) The term 'unlawful enemy combatant' means—

''(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

''(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

''(B) CO-BELLIGERENT.—In this paragraph, the term 'co-belligerent', with respect to the United States, means any State or armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy.

''(2) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means a person who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(3) ALIEN.—The term 'alien' means a person who is not a citizen of the United States.

''(4) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(5) GENEVA CONVENTIONS.—The term 'Geneva Conventions' means the international conventions signed at Geneva on August 12, 1949.

''§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

''(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided in this chapter. The judicial construction and application of that chapter are not binding on military commissions established under this chapter.

''(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by this chapter.

''(e) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''(f) STATUS OF COMMISSIONS UNDER COMMON ARTICLE 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions.

''(g) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.

''§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant is subject to trial by military commission under this chapter.

''§ 948d. Jurisdiction of military commissions

''(a) JURISDICTION.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

''(b) LAWFUL ENEMY COMBATANTS.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

''(c) DETERMINATION OF UNLAWFUL ENEMY COMBATANT STATUS DISPOSITIVE.—A finding, whether before, on, or after the date of the enactment of the Military Commissions Act of 2006, by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense that a person is an unlawful enemy combatant is dispositive for purposes of jurisdiction for trial by military commission under this chapter.

''(d) PUNISHMENTS.—A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter or the law of war.

''§ 948e. Annual report to congressional committees

''(a) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions under this chapter during such year.

''(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.

''§ 948h. Who may convene military commissions

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

''§ 948i. Who may serve on military commissions

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members of the commission such members of the armed forces eligible under subsection (a), as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

''§ 948j. Military judge of a military commission

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) QUALIFICATIONS.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members of the commission except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members of the commission.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

''§ 948k. Detail of trial counsel and defense counsel

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing of charges against the accused.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice) who—

''(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who—

''(A) is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

''§ 948l. Detail or employment of reporters and interpreters

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the commission qualified court reporters, who shall make a verbatim recording of the proceedings of and testimony taken before the commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the commission and, as necessary, for trial counsel and defense counsel and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the commission, who shall also be responsible for preparing the record of the proceedings.

''§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''§ 948q. Charges and specifications

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of the signer's knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges against him as soon as practicable.

''§ 948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) EXCLUSION OF STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence that the statement was made.

''(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value;

''(2) the interests of justice would best be served by admission of the statement into evidence; and

''(3) the interrogation methods used to obtain the statement do not violate the cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

''§ 948s. Service of charges

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had. Such charges shall be served in English and, if appropriate, in another language that the accused understands. Such service shall be made sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense, in consultation with the Attorney General. Such procedures shall, so far as the Secretary considers practicable or consistent with military or intelligence activities, apply the principles of law and the rules of evidence in trial by general courts-martial. Such procedures and rules of evidence may not be contrary to or inconsistent with this chapter.

''(b) RULES FOR MILITARY COMMISSION.—(1) Notwithstanding any departures from the law and the rules of evidence in trial by general courts-martial authorized by subsection (a), the procedures and rules of evidence in trials by military commission under this chapter shall include the following:

''(A) The accused shall be permitted to present evidence in his defense, to cross-examine the witnesses who testify against him,

and to respond to evidence admitted against him on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

''(B) The accused shall be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) The accused shall receive the assistance of counsel as provided for by section 948k.

''(D) The accused shall be permitted to represent himself, as provided for by paragraph (3).

''(2) In establishing procedures and rules of evidence for military commission proceedings, the Secretary of Defense may prescribe the following provisions:

''(A) Evidence shall be admissible if the military judge determines that the evidence would have probative value to a reasonable person.

''(B) Evidence shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or other authorization.

''(C) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

''(D) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient basis to find that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(E)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under the preceding sentence is subject to the requirements and limitations applicable to the disclosure of classified information in section 949j(c) of this title.

''(ii) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial shall not be admitted in a trial by military commission if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value.

''(F) The military judge shall exclude any evidence the probative value of which is substantially outweighed—

''(i) by the danger of unfair prejudice, confusion of the issues, or misleading the commission; or

''(ii) by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (1)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (1)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''(d) NOTIFICATION TO CONGRESSIONAL COMMITTEES OF CHANGES TO PROCEDURES.—Not later than 60 days before the date on which any proposed modification of the procedures in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the modification.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or his functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to his judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) Paragraphs (1) and (2) do not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, but only if such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to classified information that is classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information and may not divulge such information to any person not authorized to receive it.

''(5) If the accused is represented by civilian counsel, military counsel detailed shall act as associate counsel.

''(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in that person's sole discretion, may detail additional military counsel to represent the accused.

''(7) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (c) and (e), any proceedings under paragraph (1) shall—

''(A) be conducted in the presence of the accused, defense counsel, and trial counsel; and

''(B) be made part of the record.

''(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—Except as provided in subsections (c) and (e), all proceedings of a military commission under this chapter, including any consultation of the members with the military judge or counsel, shall—

''(1) be in the presence of the accused, defense counsel, and trial counsel; and

''(2) be made a part of the record.

''(c) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(d) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter, but only in accordance with this subsection.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(e) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''(f) PROTECTION OF CLASSIFIED INFORMATION.—

''(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. The rule in the preceding sentence applies to all stages of the proceedings of military commissions under this chapter.

''(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

''(i) the information is properly classified; and

''(ii) disclosure of the information would be detrimental to the national security.

''(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

''(A) ALTERNATIVES TO DISCLOSURE.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

''(B) PROTECTION OF SOURCES, METHODS, OR ACTIVITIES.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

''(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel's claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

''(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military commissions under this chapter. A report on any regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days before the date on which such regulations or modifications, as the case may be, go into effect.

''§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

''§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the commission. The military judge shall determine the relevance and validity of challenges for cause. The military judge may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—Each accused and the trial counsel are entitled to one peremptory challenge. The military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

''§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary of Defense. Those regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

''§ 949i. Pleas of the accused

''(a) ENTRY OF PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

''§ 949j. Opportunity to obtain witnesses and other evidence

''(a) RIGHT OF DEFENSE COUNSEL.—Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(b) PROCESS FOR COMPULSION.—Process issued in a military commission under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(1) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(2) shall run to any place where the United States shall have jurisdiction thereof.

''(c) PROTECTION OF CLASSIFIED INFORMATION.—(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(A) the deletion of specified items of classified information from documents to be made available to the accused;

''(B) the substitution of a portion or summary of the information for such classified documents; or

''(C) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

''(d) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (c).

''(2) In this subsection, the term 'evidence known to trial counsel', in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by general court-martial under chapter 47 of this title.

''§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members of the commission as to the defense of lack of mental responsibility under this section and shall charge them to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

''§ 949l. Voting and rulings

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

''§ 949m. Number of votes required

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) No person may be sentenced by a military commission to suffer death, except insofar as—

''(A) the penalty of death is expressly authorized under this chapter or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused is convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all the members present at the time the vote is taken concur in the sentence of death.

''(2) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(3) All other sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with not fewer than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

''§ 949n. Military commission to announce action

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

''§ 949o. Record of trial

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall be given a redacted version of the record consistent with the requirements of section 949d of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

''§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

''§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

''§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been given an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action on the sentence under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(3) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, may—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

''§ 950c. Appellate referral; waiver or withdrawal of appeal

''(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided under subsection (b), in each case in which the final decision of a military commission (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

''(b) WAIVER OF RIGHT OF REVIEW.—(1) In each case subject to appellate review under section 950f of this title, except a case in which the sentence as approved under section 950b of this title extends to death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice on the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(d) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

''§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (d), (e), or (f) of section 949d of this title or section 949j(c) of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of such order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the Court of Military Commission Review. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''(d) APPEAL FROM ADVERSE RULING.—The United States may appeal an adverse ruling on an appeal under subsection (c) to the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in the Court of Appeals within 10 days after the date of such ruling. Review under this subsection shall be at the discretion of the Court of Appeals.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

''§ 950f. Review by Court of Military Commission Review

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Court of Military Commission Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

''(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military

judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may be serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

''(c) CASES TO BE REVIEWED.—The Court of Military Commission Review, in accordance with procedures prescribed under regulations of the Secretary, shall review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter of law raised by the accused.

''(d) SCOPE OF REVIEW.—In a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.

''§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court

''(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A) Except as provided in subparagraph (B), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority) under this chapter.

''(B) The Court of Appeals may not review the final judgment until all other appeals under this chapter have been waived or exhausted.

''(2) A petition for review must be filed by the accused in the Court of Appeals not later than 20 days after the date on which—

''(A) written notice of the final decision of the Court of Military Commission Review is served on the accused or on defense counsel; or

''(B) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.

''(b) STANDARD FOR REVIEW.—In a case reviewed by it under this section, the Court of Appeals may act only with respect to matters of law.

''(c) SCOPE OF REVIEW.—The jurisdiction of the Court of Appeals on an appeal under subsection (a) shall be limited to the consideration of—

''(1) whether the final decision was consistent with the standards and procedures specified in this chapter; and

''(2) to the extent applicable, the Constitution and the laws of the United States.

''(d) SUPREME COURT.—The Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals pursuant to section 1257 of title 28.

''§ 950h. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for counsel appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

''(1) shall represent the United States in any appeal or review proceeding under this chapter before the Court of Military Commission Review; and

''(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (4) of that section.

''§ 950i. Execution of sentence; procedures for execution of sentence of death

''(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

''(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and—

''(i) a petition for a writ of certiorari is not timely filed;

''(ii) such a petition is denied by the Supreme Court; or

''(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(d) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

''§ 950k. Finality or proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''§ 950p. Statement of substantive offenses

''(a) PURPOSE.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

''§ 950q. Principals

''Any person is punishable as a principal under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

''(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

''§ 950r. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

''§ 950s. Conviction of lesser included offense

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

''§ 950t. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

''§ 950u. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable

by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

"§ 950v. Crimes triable by military commissions

''(a) DEFINITIONS AND CONSTRUCTION.—In this section:

''(1) MILITARY OBJECTIVE.—The term 'military objective' means—

''(A) combatants; and

''(B) those objects during an armed conflict—

''(i) which, by their nature, location, purpose, or use, effectively contribute to the opposing force's war-fighting or war-sustaining capability; and

''(ii) the total or partial destruction, capture, or neutralization of which would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.

''(2) PROTECTED PERSON.—The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including—

''(A) civilians not taking an active part in hostilities;

''(B) military personnel placed hors de combat by sickness, wounds, or detention; and

''(C) military medical or religious personnel.

''(3) PROTECTED PROPERTY.—The term 'protected property' means property specifically protected by the law of war (such as buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, or places where the sick and wounded are collected), if such property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(4) CONSTRUCTION.—The intent specified for an offense under paragraph (1), (2), (3), (4), or (12) of subsection (b) precludes the applicability of such offense with regard to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(b) OFFENSES.—The following offenses shall be triable by military commission under this chapter at any time without limitation:

''(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(2) ATTACKING CIVILIANS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''(4) ATTACKING PROTECTED PROPERTY.—Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''(5) PILLAGING.—Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(8) EMPLOYING POISON OR SIMILAR WEAPONS.—Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(9) USING PROTECTED PERSONS AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

''(11) TORTURE.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(12) CRUEL OR INHUMAN TREATMENT.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) DEFINITIONS.—In this paragraph:

''(i) The term 'serious physical pain or suffering' means bodily injury that involves—

''(I) a substantial risk of death;

''(II) extreme physical pain;

''(III) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(IV) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

''(ii) The term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(iii) The term 'serious mental pain or suffering' has the meaning given the term 'severe mental pain or suffering' in section 2340(2) of title 18, except that—

''(I) the term 'serious' shall replace the term 'severe' where it appears; and

''(II) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

''(A) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term 'serious bodily injury' means bodily injury which involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) protracted and obvious disfigurement; or

''(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''(14) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does

not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(15) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(16) DESTRUCTION OF PROPERTY IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

''(17) USING TREACHERY OR PERFIDY.—Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(18) IMPROPERLY USING A FLAG OF TRUCE.—Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

''(19) IMPROPERLY USING A DISTINCTIVE EMBLEM.—Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

''(20) INTENTIONALLY MISTREATING A DEAD BODY.—Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessity, shall be punished as a military commission under this chapter may direct.

''(21) RAPE.—Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

''(22) SEXUAL ASSAULT OR ABUSE.—Any person subject to this chapter who forcibly or with coercion or threat of force engages in sexual contact with one or more persons, or causes one or more persons to engage in sexual contact, shall be punished as a military commission under this chapter may direct.

''(23) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(24) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—

''(A) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(B) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this paragraph, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

''(26) WRONGFULLY AIDING THE ENEMY.—Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

''(27) SPYING.—Any person subject to this chapter who with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(28) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950w. Perjury and obstruction of justice; contempt

''(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to military commissions under this chapter.

''(b) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''47A. Military Commissions ..... 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY JUSTICE.

(a) CONFORMING AMENDMENTS.—Chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) APPLICABILITY TO LAWFUL ENEMY COMBATANTS.—Section 802(a) (article 2(a)) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.''.

(2) EXCLUSION OF APPLICABILITY TO CHAPTER 47A COMMISSIONS.—Sections 821, 828, 848, 850(a), 904, and 906 (articles 21, 28, 48, 50(a), 104, and 106) are amended by adding at the end the following new sentence: ''This section does not apply to a military commission established under chapter 47A of this title.''.

(3) INAPPLICABILITY OF REQUIREMENTS RELATING TO REGULATIONS.—Section 836 (article 36(b)) is amended—

(A) in subsection (a), by inserting '', except as provided in chapter 47A of this title,'' after ''but which may not''; and

(B) in subsection (b), by inserting before the period at the end '', except insofar as applicable to military commissions established under chapter 47A of this title''.

(b) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

(2) by adding at the end the following new subsection:

''(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva Conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—

(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) DEFINITIONS.—In this subsection:

(A) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) THIRD GENEVA CONVENTION.—The term ''Third Geneva Convention'' means the international convention referred to in subparagraph (A)(iii).

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

(B) by adding at the end the following new subsection:

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

''(D) the term 'serious physical pain or suffering' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

''(E) the term 'serious mental pain or suffering' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term 'severe mental pain or suffering' (as defined in section 2340(2) of this title), except that—

''(i) the term 'serious' shall replace the term 'severe' where it appears; and

''(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.''.

(2) RETROACTIVE APPLICABILITY.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Public Law 107–273).

(c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this subsection, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading

Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

SEC. 7. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742) and the subsection (e) added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477) and inserting the following new subsection (e):

''(e)(1) 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 detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005 RELATING TO PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.

(a) COUNSEL AND INVESTIGATIONS.—Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection''.

(b) PROTECTION OF PERSONNEL.—Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution that—

(1) relates to the detention and interrogation of aliens described in such section;

(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

(3) relates to actions occurring between September 11, 2001, and December 30, 2005.

SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.

Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(1) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(3) in subparagraph (C)—

(A) in clause (i)—

(i) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(ii) by striking ''at Guantanamo Bay, Cuba''; and

(B) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(4) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''. This shall become effective 2 days after the date of enactment.

SA 5039. Mr. FRIST proposed an amendment to amendment SA 5038 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; as follows:

At the end of the amendment in the instructions:

Strike ''2 days'' and insert ''3 days''.

SA 5040. Mr. FRIST proposed an amendment to amendment SA 5039 proposed by Mr. FRIST to the amendment SA 5038 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; as follows:

In the amendment:

Strike ''3 days'' and insert ''4 days.''

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a business meeting, off-the-floor, on the nomination of Mary Peters to be Secretary of Transportation on Monday, September 25, 2006 after the first rollcall vote.

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

SECURE FENCE ACT OF 2006—Resumed

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate come out of morning business and return to the pending bill.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6061) to establish operational control over the international land and maritime borders of the United States.

Pending:

Frist amendment No. 5031, to establish the effective date.

Frist amendment No. 5032 (to amendment No. 5031), to amend the effective date.

AMENDMENT NO. 5031, WITHDRAWN

Mr. FRIST. Mr. President, I ask unanimous consent to withdraw amendment No. 5031.

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

AMENDMENT NO. 5036

Mr. FRIST. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 5036.

Mr. FRIST. 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 printed in today's RECORD under ''Text of Amendments.'')

Mr. FRIST. 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.

AMENDMENT NO. 5037 TO AMENDMENT NO. 5036

Mr. FRIST. Mr. President, I send a second degree to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 5037 to amendment No. 5036.

Mr. FRIST. 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:

At the end of the amendment, add the following:

This Act shall become effective 1 day after the date of enactment.

CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk on the pending first-degree amendment.

The PRESIDING OFFICER. The cloture motion having been presented under Rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending amendment No. 5036 to Calendar No. 615, H.R. 6061: a bill to establish operational control over the international land and maritime borders of the United States.

Bill Frist, Jim DeMint, Johnny Isakson, Craig Thomas, Jim Inhofe, Pat Roberts, Gordon Smith, Wayne Allard, John Ensign, Saxby Chambliss, Chris Bond, Conrad Burns, Norm Coleman, Mitch McConnell, Michael B. Enzi, Richard Shelby, John Thune.

CLOTURE MOTION

Mr. FRIST. I now send a cloture motion to the desk on the underlying bill.

The PRESIDING OFFICER. The cloture motion having been presented

under Rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 615, H.R. 6061, a bill to establish operational control over the international land and maritime borders of the United States.

Bill Frist, Lamar Alexander, Richard Burr, Gordon Smith, John Thune, Johnny Isakson, John Cornyn, Judd Gregg, Jim Inhofe, Saxby Chambliss, Sam Brownback, Tom Coburn, Jeff Sessions, Richard Shelby, Craig Thomas, Michael B. Enzi, Lisa Murkowski.

Mr. FRIST. I ask the mandatory quorum for both motions be waived.

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

MOTION TO COMMIT

Mr. FRIST. I move to commit the bill to the Judiciary Committee, with instructions to report back forthwith, with an amendment, and I send the motion to the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] moves to commit the bill, H.R. 6061, to the Committee on the Judiciary, with instructions to report back forthwith, with an amendment.

Mr. FRIST. I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 5039

Mr. FRIST. I send a first-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 5039 to the instructions of the motion to commit.

Mr. FRIST. 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:

At the end of the amendment in the instructions:

Strike ''2 days'' and insert ''3 days''.

Mr. FRIST. 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.

AMENDMENT NO. 5040 TO AMENDMENT NO. 5039

Mr. FRIST. Mr. President, I now send a second degree to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 5040 to amendment No. 5039.

Mr. FRIST. 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:

In the amendment strike ''3 days'' and insert ''4 days.''

Mr. FRIST. Mr. President, we can come back and comment on this, but what I have just done is put an amendment on the legislation. The military commission or Hamdan legislation—I have put that as an amendment on the border security fence bill. I say that just so our colleagues will understand the Democratic leader and I are working very hard to reach an agreement, and we are just about there. We need to talk to some more colleagues about how we will address the Hamdan legislation.

Because things are tight in terms of being able to finish the amount of business we need to do in the next 4 to 5 days, what we just went through was to set up a structure whereby we know we are going to be able to finish that. Again, our intent is to work out a plan to be able to address that legislation in a way that is agreeable to both sides. I think we should be able to do that tomorrow morning.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, if I could just briefly respond, we would like to proceed as expeditiously as possible. We have been alerted by one of my Senators that the rule XIV legislation that was brought to the Senate late last week is different from the amendment that was filed tonight. So some of my folks are trying to figure out what has happened. We thought what was going to be filed as an amendment to this fence bill was the same piece of legislation that was rule XIVed. So we have now a rule XIV that has been sent up, and now we have this amendment. So that has created a little bit of confusion on our side.

But I also say this: I think we could work something out if we can get to the bill. When we start late in the session like this, any one Senator weighs about 1,000 pounds because any Senator can stop anything they want. So we have to make sure we can get to this. It takes all 100 Senators to agree that is the case. If we could proceed to it, it is my understanding the majority leader would allow a limited number of amendments. We could work on this tomorrow with some time agreements on it—agreements on both sides.

If this is not worked out, it is my understanding that what would happen is that on Wednesday there would be a cloture vote on this amendment dealing with Hamdan. That would occur on Wednesday, and then after that, amendments germane in nature would be in order if, in fact, the majority decided to allow any amendments to go forward.

So it appears to me the best chance for Senators on both sides to have an opportunity to offer amendments to Hamdan would be to move to it tomorrow. If we cannot do that, then we will have to see what happens with cloture. But I believe that is where we find ourselves tonight.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, that is exactly where we are. I think the good news is both sides recognize this is a very important issue before this body and before the American people and that we have had a lot of work on this bill to where I think—speaking of the Hamdan legislation—there is going to be very broad support. There are areas people have expressed concern about, and our intent is to work out a unanimous consent agreement hopefully early in the morning whereby we can address those with amendments.

Mr. REID. Mr. President, I would further say just briefly that, yes, we do have this matter before us. Is it what we want? The answer is, probably we think we could do better. That is why we would agree on this side to have a limited number of amendments and have this body decide whether the bill can be improved. We hope that can occur. As I have indicated in my previous statement, it all depends on how the other 98 Senators feel as to whether we can move forward short of cloture on Wednesday.

UNANIMOUS CONSENT REQUEST—S. 3709

Mr. FRIST. Mr. President, on another issue, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the immediate consideration of Calendar No. 527, S. 3709, the U.S.-India nuclear bill.

I further ask consent that the managers' amendment at the desk be agreed to as original text for the purpose of further amendment and the only other amendments in order be FEINGOLD on Presidential certification, DORGAN on fissile material production, BOXER on Iran, REID on Yucca Mountain, CRAIG on Yucca Mountain, with no second-degree amendments in order, 1 hour of debate on each amendment, and 1 hour of general debate on the bill, all equally divided in the usual form.

I further ask consent that following disposition of amendments and the use or yielding back of time, the bill, as amended, be read a third time and the Senate proceed to the consideration of H.R. 5682, the House-passed companion, that all after the enacting clause be stricken and the text of S. 3709, as amended, be inserted in lieu thereof, and that the Senate then proceed to a vote on passage of H.R. 5682, as amended, with no intervening action or debate.

I further ask consent that following passage of the bill, the Senate insist upon its amendment and request a conference with the House, the Chair be authorized to appoint conferees, and S. 3709 be returned to the calendar.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President. I received a rare personal telephone call today from Secretary Condoleezza Rice, which I appreciated. It was on this subject matter. I told her how I felt. I told her it is unfortunate that this legislation has been put aside since last July until today. I also told her that I personally support the legislation. I cosponsored it. I think it is important legislation.

I told her exactly what I told the majority leader and the Indian Foreign Minister last week; that is, I support this legislation and believe it is very important for the full Senate to act on it very quickly.

This legislation, I believe, is strongly supported by a sizable majority of the Senate. I canvased our side for amendments. We have a number of amendments that have been talked about. I think that is the universe of the amendments, with rare exception. I think these are manageable amendments. They are few in number. And I think we could complete this legislation very quickly. I have directed our floor staff to prepare a unanimous consent request to that effect.

We have a situation where the managers' amendment Senator LUGAR and Senator BIDEN have come up with—they have not been able to work this out, the two managers. These are two of the most senior Members of the Senate. I hope they can do that in the near future.

So I ask unanimous consent that the majority leader's request be modified as follows: that once the agreement has been reached on the managers' amendment, the Senate begin consideration of S. 3709 under the following limitations: that the managers' amendment be immediately agreed to for purposes of original text, that first-degree amendments deal with similar subject matter as contained in the bill, and that relevant second-degree amendments be in order.

Before the Chair puts the question, I would point out it would be my expectation we could finish this bill very quickly. I think we could finish it in 1 day. It might be a long day, but we could do that. I think we could do that. I think this is important enough that we should have a long day, if necessary, to do this and that agreements would be possible on each of our amendments. On every amendment we would offer, we would agree to a relatively short time limit.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. FRIST. Mr. President, reserving the right to object, as the Democratic leader said, this is a critically important piece of legislation. That is why I wanted to bring it forward tonight and am pleased the Democratic leader so strongly supports the legislation. Our challenge will be to figure out how we can address it with the appropriate concerns. And I understand his statement on the managers' amendment of the chairman and ranking member, that there is a little more work that needs to be done.

Enactment of this legislation will create significant export opportunities for U.S. industry, with job creation, with thousands of new jobs created. There are some technical differences between the House and Senate bills that will have to be worked out in conference. Therefore, I do believe we should address this bill before we leave.

Mr. FRIST. Mr. President, right now, I will object to the modification of my unanimous consent request. After a brief discussion, we can come back and see if we are close to being able to take this to the floor under this time agreement, with these amendments. I think we ought to lock it down tonight. With that, I object to the modification.

The PRESIDING OFFICER. Objection is heard to the modification.

Is there objection to the original request?

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DURBIN. Mr. President, will the majority leader yield for a question?

Mr. FRIST. First, let me go through the remaining business.

Mr. DURBIN. I will wait.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to executive session; provided further that the Agriculture Committee be discharged from further consideration of the nomination of Charles F. Connor, PN1911, to be a member of the board of directors of the Commodity Credit Corporation; provided further that the Senate proceed to its consideration, the nomination be confirmed, with the motion to reconsider laid upon the table, and the President be immediately notified of the Senate's action, and that the Senate resume legislative session.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF AGRICULTURE

Charles F. Conner, of Indiana, to be a Member of the Board of Directors of the Commodity Credit Corporation.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

OBSERVING GLOBAL FAMILY DAY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 582, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 582) urging the people of the United States to observe Global Family Day and One Day of Peace and Sharing.

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

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD as if read, without intervening action or debate.

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

The resolution (S. Res. 582) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 582

Whereas in 2005, the people of the world suffered many calamitous events, including devastation from tsunamis, terror attacks, wars, famines, genocides, hurricanes, earthquakes, political and religious conflicts, diseases, poverty, and rioting, all necessitating global cooperation, compassion, and unity previously unprecedented among diverse cultures, faiths, and economic classes;

Whereas grave global challenges in 2006 may require cooperation and innovative problem-solving among citizens and nations on an even greater scale;

Whereas, on December 15, 2000, Congress adopted Senate Concurrent Resolution 138, expressing the sense of Congress that the President of the United States should issue a proclamation each year calling upon the people of the United States and interested organizations to observe an international day of peace and sharing at the beginning of each year;

Whereas, in 2001, the United Nations General Assembly adopted Resolution 56/2, which invited ''Member States, intergovernmental and non-governmental organizations and all the peoples of the world to celebrate One Day in Peace, 1 January 2002, and every year thereafter'';

Whereas many foreign heads of State have recognized the importance of establishing Global Family Day, a special day of international unity, peace, and sharing, on the first day of each year; and

Whereas family is the basic structure of humanity, thus, we must all look to the stability and love within our individual families to create stability in the global community: Now therefore, be it

Resolved, That the Senate urgently requests—

(1) the people of the United States to observe Global Family Day and One Day of Peace and Sharing with appropriate activities stressing the need—

(A) to eradicate violence, hunger, poverty, and suffering; and

(B) to establish greater trust and fellowship among peace-loving countries and families everywhere; and

(2) that American businesses, labor organizations, and faith and civic leaders are urged to join in promoting appropriate activities for Americans and in extending appropriate greetings from the families of America to families in the rest of the world.

DESIGNATING SEPTEMBER AS ''NATIONAL YOUTH COURT MONTH''

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 583, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 583) designating September 2006 as ''National Youth Court Month.''

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

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The resolution (S. Res. 583) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 583

Whereas a strong country begins with strong communities in which all citizens play an active role and invest in the success and future of the youth of the United States;

Whereas the fifth National Youth Court Month celebrates the outstanding achievement of youth courts throughout the country;

Whereas in 2005, more than 110,000 youths volunteered to hear more than 115,000 juvenile cases, and more than 20,000 adults volunteered to facilitate peer justice in youth court programs;

Whereas 1,158 youth court programs in 49 States and the District of Columbia provide restorative justice for juvenile offenders, resulting in effective crime prevention, early intervention and education for all youth participants, and enhanced public safety throughout the United States;

Whereas, by holding juvenile offenders accountable, reconciling victims, communities, juvenile offenders, and their families, and reducing caseloads for the juvenile justice system, youth courts address offenses that might otherwise go unaddressed until the offending behavior escalates and redirects the efforts of juvenile offenders toward becoming contributing members of their communities;

Whereas Federal, State, and local governments, corporations, foundations, service organizations, educational institutions, juvenile justice agencies, and individual adults support youth courts because youth court programs actively promote and contribute to building successful, productive lives and futures for the youth of the United States;

Whereas a fundamental correlation exists between youth service and lifelong adult commitment to and involvement in one's community;

Whereas volunteer service and related service learning opportunities enable young people to build character and develop and enhance life-skills, such as responsibility, decision-making, time management, teamwork, public speaking, and leadership, which prospective employers will value; and

Whereas participating in youth court programs encourages youth court members to become valuable members of their communities: Now, therefore, be it

Resolved, That the Senate designates September 2006 as ''National Youth Court Month''.

SENATE LEGAL COUNSEL AUTHORIZATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 584, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 584) to authorize the production of records, testimony, and legal representation.

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

Mr. FRIST. Mr. President, the Committee on Health, Education, Labor, and Pensions has received a request from the U.S. Attorney's Office for the District of Columbia for records of the committee and testimony by committee staff relevant to an investigation it is conducting into a Presidential nominee's financial disclosure to the committee during confirmation proceedings. The chair and ranking member of the committee would like to cooperate with this request.

Accordingly, in keeping with Senate rules and practice, this resolution would authorize the committee to produce documents for use in this investigation. The resolution would also authorize testimony by committee staff, with representation by the Senate Legal Counsel.

Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 584) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 584

Whereas, the United States Attorney's Office for the District of Columbia is conducting an investigation of the financial disclosures made by Dr. Lester Crawford to the Committee on Health, Education, Labor, and Pensions in connection with confirmation proceedings on Dr. Crawford's nomination to be Commissioner of the Food and Drug Administration;

Whereas, the Committee on Health, Education, Labor, and Pensions has received a request from the United States Attorney's Office for testimony of three employees of the Committee and for records of the Committee relevant to the investigation;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate; and

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Committee on Health, Education, Labor, and Pensions is authorized to produce documents and committee staff are authorized to testify in these and related proceedings, except where a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent employees of the Committee on Health, Education, Labor, and Pensions in connection with the document production and testimony authorized in section one of this resolution.

SENSE OF THE CONGRESS THAT STATES SHOULD REQUIRE CANDIDATES FOR DRIVER'S LICENSES TO DEMONSTRATE ABILITY TO EXERCISE INCREASED CAUTION

Mr. FRIST. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration and the Senate proceed to H. Con. Res. 235.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 235) expressing the sense of the Congress that States should require candidates for driver's licenses to demonstrate an ability to exercise greatly increased caution when driving in the proximity of a potentially visually impaired individual.

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

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider laid upon the table.

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

The concurrent resolution (H. Con. Res. 235) was agreed to.

The preamble was agreed to.

NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION ACT OF 2006

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 613, S. 3679.

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

The legislative clerk read as follows:

A bill (S. 3679) to authorize appropriations for the National Transportation Safety Board, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 3679

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the ''National Transportation Safety Board Reauthorization Act of 2006''.

[(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

[SEC. 2. REPORTS.

[(a) ANNUAL REPORTS.—

[(1) IN GENERAL.—Section 1117 of title 49, United States Code, is amended—

[(A) by striking ''and'' after the semicolon in paragraph (2);

[(B) by striking ''State.'' in paragraph (3) and inserting ''State;''; and

[(C) by adding at the end the following:

[''(4) a description of the activities and operations of the National Transportation Safety Board Academy during the prior calendar year;

[''(5) a list of accidents during the prior calendar year that the Board was required to investigate under section 1131 of this title but did not investigate, and an explanation of why they were not investigated; and

[''(6) a list of ongoing investigations that have exceeded the expected time allotted for completion by Board order and an explanation for the additional time required to complete each such investigation.''.

[(2) UTILIZATION PLAN.—

[(A) PLAN.—Within 90 days after the date of enactment of this Act, the National Transportation Safety Board shall—

[(i) develop a plan to achieve the self-sufficient operation of the National Transportation Safety Board Academy and utilize fully the Academy's facilities and resources;

[(ii) submit a draft of the plan to the Comptroller General for review and comment; and

[(iii) submit a draft of the plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

[(B) PLAN DEVELOPMENT CONSIDERATIONS.—The Board shall—

[(i) give consideration in developing the plan to subleasing the facility to another entity or other revenue-generating measures; and

[(ii) include in the plan a detailed financial statement that covers current Academy expenses and revenues and an analysis of the projected impact of the plan on the Academy's expenses and revenues.

[(C) REPORT.—Within 180 days after the date of enactment of this Act, the National Transportation Safety Board shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that includes—

[(i) an updated copy of the plan;

[(ii) any comments and recommendations made by the Comptroller General pursuant to the Government Accountability Office's review of the draft plan; and

[(iii) a response to the Comptroller General's comments and recommendations, including a description of any modifications made to the plan in response to those comments and recommendations.

[(D) IMPLEMENTATION.—The plan shall be fully implemented within 2 years after the date of enactment of this Act.

[(b) DOT REPORT ON COMPLIANCE WITH RECOMMENDATIONS.—Within 90 days after the Secretary of Transportation submits a report under section 1135(d) of title 49, United States Code, the National Transportation Safety Board shall review the Secretary's report and transmit comments on the report to the Secretary, the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

[(c) TRANSPORTATION SAFETY REAUTHORIZATION RECOMMENDATIONS.—The Board shall, as appropriate, provide recommendations and comments to the Congress pertaining to pending transportation safety legislation.

[SEC. 3. REPEAL OF REIMBURSEMENT FOR DOT INSPECTOR GENERAL SERVICES.

[Section 1137 of title 49, United States Code, is amended by striking subsection (d).

[SEC. 4. CONTRACTING REQUIREMENTS FOR INVESTIGATION SERVICES.

[(a) IN GENERAL.—Section 1113(b) of title 49, United States Code, is amended—

[(1) by striking ''and'' after the semicolon in paragraph (1)(H);

[(2) by redesignating subparagraph (I) as subparagraph (J) in paragraph (1);

[(3) by inserting after subparagraph (H) of paragraph (1) the following:

[''(I) for an investigation under section 1131, enter into agreements or contracts without regard to any other provision of law requiring competition, if necessary to expedite the investigation; and''; and

[(4) by striking ''(1)(I)'' each place it appears in paragraph (2) and inserting ''(1)(J)''.

[(b) REPORT ON USAGE.—Section 1117 of title 49, United States Code, as amended by section 2, is further amended—

[(1) by striking ''and'' after the semicolon in paragraph (5);

[(2) by striking ''investigation.'' in paragraph (6) and inserting ''investigation; and''; and

[(3) by adding at the end the following:

[''(7) a description of each contract executed during the preceding calendar year under the authority of section 1113(b)(1)(I), and the rationale for dispensing with competition requirements with respect to each such contract.''.

[SEC. 5. TECHNICAL CORRECTIONS.

[(a) FUNCTIONAL UNIT FOR MARINE INVESTIGATIONS.—Section 1111(g) of title 49, United States Code, is amended by adding at the end the following:

[''(5) marine.''.

[(b) MARINE CASUALTY INVESTIGATIONS.—Section 1131(a)(1)(E) of title 49, United States Code, is amended—

[(1) by striking ''on the navigable waters or territorial sea of the United States,'' and inserting ''on the navigable waters, all internal waters, and the territorial sea of the United States,''; and

[(2) by inserting ''(as defined in section 2101(46))'' after ''vessel of the United States''.

[(c) REFERENCE TO DEPARTMENTAL AUTHORITY.—Section 1131(c)(1) of title 49, United States Code, is amended by inserting ''or the Secretary of the department in which the Coast Guard is operating'' after ''Transportation''.

[(d) APPOINTMENT OF MANAGING DIRECTOR.—Section 1111 of title 49, United States Code, is amended—

[(1) by striking paragraph (1) of subsection (e) and inserting the following:

[''(1) appoint and supervise officers and employees, other than regular and fulltime employees in the immediate offices of another member, necessary to carry out this chapter;'';

[(2) by redesignating paragraphs (2) and (3) of subsection (e) as paragraphs (3) and (4), respectively, and inserting after paragraph (1) the following:

[''(2) fix the pay of officers and employees necessary to carry out this chapter;'';

[(3) by redesignating subsection (i) as subsection (k); and

[(4) by inserting after subsection (h) the following:

[''(i) MANAGING DIRECTOR.—The Board shall have a Managing Director who shall be—

[''(1) appointed by the Chairman, in consultation with the Board; and

[''(2) approved by the Board, pursuant to a procedure developed and adopted by the Board.

[''(j) BOARD MEMBER STAFF.—Each member of the Board shall appoint and supervise regular and fulltime employees in his or her immediate office as long as any such employee has been approved for employment by the designated agency ethics official under the same guidelines that apply to all employees of the Board. The appointment authority provided by this subsection is limited to the number of fulltime equivalent positions, in addition to 1 senior professional staff at the GS–15 level and 1 administrative staff, allocated each member through the Board's annual budget and allocation process.''.

[(e) BOARD APPROVAL.—Section 1113(c) of title 49, United States Code, is amended by inserting ''The Board shall develop and approve a process for the Board's review and comment or approval of documents submitted to the President, Director of the Office of Management and Budget, or the Congress under this subsection.'' after ''Congress.''.

[(f) INVESTIGATION TRACKING SYSTEM.—Within 6 months after the date of enactment of this Act, the National Transportation Safety Board shall develop and implement a process or system available to all Board members that tracks the status and activities associated with all ongoing and pending investigations undertaken by the Board, including the expected completion date, staff assignments, and such other information as the Board may require for the investigations.

[(g) INVESTIGATIVE OFFICERS.—Section 1113 of title 49, United States Code, is amended by adding at the end thereof the following:

[''(h) INVESTIGATIVE OFFICERS.—The Board shall maintain at least 1 fulltime employee in each State located more than 1,000 miles from the nearest Board regional office to provide initial investigative response to accidents the Board is empowered to investigate under this chapter that occur in those States.''.

[SEC. 6. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

[(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

[''§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents

[''(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Rail Security Act of 2005, Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

[''(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

[''(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

[''(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

[''(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

[''(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

[''(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

[''(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

[''(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

[''(c) USE OF INFORMATION.—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

[''(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

[''(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

[''(f) FUNDING.—There shall be made available to the Secretary of Transportation for the use of Amtrak $500,000 for fiscal year 2007 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.''.

[(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

[''24316. Plan to assist families of passengers involved in rail passenger accidents.''.

[SEC. 7. INSPECTOR GENERAL OF THE NATIONAL TRANSPORTATION SAFETY BOARD.

[(a) IN GENERAL.—Section 1137 of title 49, United States Code, is amended to read as follows:

[''§ 1137. Designation of the Department of Transportation Inspector General as Inspector General of the National Transportation Safety Board

[''(a) ESTABLISHMENT OF INSPECTOR GENERAL OF THE NATIONAL TRANSPORTATION SAFETY BOARD.—In order to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in the programs, operations, and activities of the National Transportation Safety Board, the Inspector General of the Department of Transportation shall serve as the Inspector General of the National Transportation Safety Board.

[''(b) AUTHORITY OF THE INSPECTOR GENERAL.—

[''(1) The Inspector General shall exercise such authority as provided by the Inspector General Act of 1978, and other applicable laws, over Board programs, operations and activities not directly associated with specific accident investigations or adjudications, including—

[''(A) financial management, property management, and business operations, including internal accounting and administrative control systems;

[''(B) information management and security, including privacy protection of personally identifiable information;

[''(C) resource management;

[''(D) workforce development;

[''(E) procurement and contracting planning, practices and policies;

[''(F) malfeasance in office by Board employees and contractors; and

[''(G) allegations of false statements, fraud, and other criminal activity within the jurisdiction of the Board.

[''(2) In consultation with the Senate Committee on Commerce, Science, and Transportation or the House Committee on Transportation and Infrastructure Committee, the Inspector General may conduct an audit, investigation, or other review on matters not described in subparagraphs (A) through (G) of paragraph (1).

[''(c) DUTIES.—In carrying out this section, the Inspector General shall—

[''(1) report directly to the Chairman of the Committee and ensure that the Chairman is kept fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs, operations, and activities of the Board;

[''(2) recommend to the Chairman corrective action concerning such problems, abuses, and deficiencies;

[''(3) report to the Chairman on the progress made in implementing such corrective action; and

[''(4) promptly notify the Chairman on any problems related to access for information or carrying out an audit or investigation.

[''(d) INFORMATION PROVIDED TO BOARD MEMBERS.—The Inspector General and Chairman shall ensure that all members of the Board are informed of major work in progress through regular and periodic briefings and, as appropriate, on a timelier basis for matters of a significant nature.

[''(e) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for use by the Inspector General of the Department of Transportation such sums as may be necessary to cover expenses associated with activities pursuant to the authority exercised as the Inspector General of the Board. In the absence of an appropriation, the Inspector General and the Board shall have a reimbursable agreement to cover such expenses.''.

[(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 11 of title 49, United States Code, is amended by striking the item relating to section 1137 and inserting the following:

[''1137. Designation of the Department of Transportation Inspector General as Inspector General of the National Transportation Safety Board.''.

[SEC. 8. AUDIT PROCEDURES.

[The National Transportation Safety Board, in consultation with the Inspector General, shall continue to develop and implement comprehensive internal audit controls for its operations. The audit controls shall, at a minimum, address Board asset management systems, including systems for accounting management, debt collection, travel, and property and inventory management and control.

[SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

[(a) IN GENERAL.—Section 1118(a) of title 49, United States Code, is amended—

[(1) by striking ''and'' after ''2005,''; and

[(2) by striking ''2006.'' and inserting ''2006, $79,594,000 for fiscal year 2007, and $84,382,432 for fiscal year 2008.''.

[(b) EMERGENCY FUND.—Section 1118(b) of title 49, United States Code, is amended to read as follows:

[''(b) EMERGENCY FUND.—There are authorized to be appropriated for necessary expenses of the Board, not otherwise provided for, for accident investigations amounts sufficient to maintain the emergency fund at a level not to exceed $4,000,000, such sums to remain available until expended.''.

[(c) FEES, REFUNDS, AND REIMBURSEMENTS.—

[(1) IN GENERAL.—Section 1118(c) of title 49, United States Code, is amended—

[(A) by striking ''ACADEMY.—'' and inserting ''FEES, REFUNDS, AND REIMBURSEMENTS.—'';

[(B) by striking paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively, and resetting each such paragraph 2 ems from the left margin;

[(C) by striking paragraph (1), as redesignated, and inserting the following:

[''(1) IN GENERAL.—The Board may impose and collect such fees, refunds, and reimbursements as it determines to be appropriate for services provided by or through the Board.'';

[(D) by striking ''fee'' the first place it appears in paragraph (2), as redesignated, and inserting ''fee, refund, or reimbursement''; and

[(E) by striking ''imposed;'' in subparagraphs (A) and (B) of paragraph (2), as redesignated, and inserting ''imposed or with which the refund or reimbursement is associated;''.

[(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on October 1, 2005.

[(d) REPORT.—Section 1118(d) of title 49, United States Code, is repealed.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Transportation Safety Board Reauthorization Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. REPORTS.

(a) ANNUAL REPORTS.—

(1) IN GENERAL.—Section 1117 of title 49, United States Code, is amended—

(A) by striking ''and'' after the semicolon in paragraph (2);

(B) by striking ''State.'' in paragraph (3) and inserting ''State;''; and

(C) by adding at the end the following:

''(4) a description of the activities and operations of the National Transportation Safety Board Academy during the prior calendar year;

''(5) a list of accidents during the prior calendar year that the Board was required to investigate under section 1131 of this title but did not investigate, and an explanation of why they were not investigated; and

''(6) a list of ongoing investigations that have exceeded the expected time allotted for completion by Board order and an explanation for the additional time required to complete each such investigation.''.

(2) UTILIZATION PLAN.—

(A) PLAN.—Within 90 days after the date of enactment of this Act, the National Transportation Safety Board shall—

(i) develop a plan to achieve the self-sufficient operation of the National Transportation Safety Board Academy and utilize fully the Academy's facilities and resources;

(ii) submit a draft of the plan to the Comptroller General for review and comment; and

(iii) submit a draft of the plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(B) PLAN DEVELOPMENT CONSIDERATIONS.—The Board shall—

(i) give consideration in developing the plan to subleasing the facility to another entity or other revenue-generating measures; and

(ii) include in the plan a detailed financial statement that covers current Academy expenses and revenues and an analysis of the projected impact of the plan on the Academy's expenses and revenues.

(C) REPORT.—Within 180 days after the date of enactment of this Act, the National Transportation Safety Board shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that includes—

(i) an updated copy of the plan;

(ii) any comments and recommendations made by the Comptroller General pursuant to the Government Accountability Office's review of the draft plan; and

(iii) a response to the Comptroller General's comments and recommendations, including a description of any modifications made to the plan in response to those comments and recommendations.

(D) IMPLEMENTATION.—The plan shall be fully implemented within 2 years after the date of enactment of this Act.

(b) DOT REPORT ON COMPLIANCE WITH RECOMMENDATIONS.—Within 90 days after the Secretary of Transportation submits a report under section 1135(d) of title 49, United States Code, the National Transportation Safety Board shall review the Secretary's report and transmit comments on the report to the Secretary, the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) TRANSPORTATION SAFETY REAUTHORIZATION RECOMMENDATIONS.—The Board shall, as appropriate, provide recommendations and comments to the Congress pertaining to pending transportation safety legislation.

SEC. 3. CONTRACTING REQUIREMENTS FOR INVESTIGATION SERVICES.

(a) IN GENERAL.—Section 1113(b) of title 49, United States Code, is amended—

(1) by striking ''and'' after the semicolon in paragraph (1)(H);

(2) by redesignating subparagraph (I) as subparagraph (J) in paragraph (1);

(3) by inserting after subparagraph (H) of paragraph (1) the following:

''(I) for an investigation under section 1131, enter into agreements or contracts without regard to any other provision of law requiring competition, if necessary to expedite the investigation; and''; and

(4) by striking ''(1)(I)'' each place it appears in paragraph (2) and inserting ''(1)(J)''.

(b) REPORT ON USAGE.—Section 1117 of title 49, United States Code, as amended by section 2, is further amended—

(1) by striking ''and'' after the semicolon in paragraph (5);

(2) by striking ''investigation.'' in paragraph (6) and inserting ''investigation; and''; and

(3) by adding at the end the following:

''(7) a description of each contract executed during the preceding calendar year under the authority of section 1113(b)(1)(I), and the rationale for dispensing with competition requirements with respect to each such contract.''.

SEC. 4. TECHNICAL CORRECTIONS.

(a) FUNCTIONAL UNIT FOR MARINE INVESTIGATIONS.—Section 1111(g) of title 49, United States Code, is amended by adding at the end the following:

''(5) marine.''.

(b) MARINE CASUALTY INVESTIGATIONS.—Section 1131(a)(1)(E) of title 49, United States Code, is amended—

(1) by striking ''on the navigable waters or territorial sea of the United States,'' and inserting ''on the navigable waters, all internal waters, and the territorial sea of the United States,''; and

(2) by inserting ''(as defined in section 2101(46))'' after ''vessel of the United States''.

(c) REFERENCE TO DEPARTMENTAL AUTHORITY.—Section 1131(c)(1) of title 49, United States Code, is amended by inserting ''or the Secretary of the department in which the Coast Guard is operating'' after ''Transportation''.

(d) APPOINTMENT OF MANAGING DIRECTOR.—Section 1111 of title 49, United States Code, is amended—

(1) by striking paragraph (1) of subsection (e) and inserting the following:

''(1) appoint and supervise officers and employees, other than regular and fulltime employees in the immediate offices of another member, necessary to carry out this chapter;'';

(2) by redesignating paragraphs (2) and (3) of subsection (e) as paragraphs (3) and (4), respectively, and inserting after paragraph (1) the following:

''(2) fix the pay of officers and employees necessary to carry out this chapter;'';

(3) by redesignating subsection (i) as subsection (k); and

(4) by inserting after subsection (h) the following:

''(i) MANAGING DIRECTOR.—The Board shall have a Managing Director who shall be—

''(1) appointed by the Chairman, in consultation with the Board; and

''(2) approved by the Board, pursuant to a procedure developed and adopted by the Board.

''(j) BOARD MEMBER STAFF.—Each member of the Board shall appoint and supervise regular and fulltime employees in his or her immediate office as long as any such employee has been approved for employment by the designated agency ethics official under the same guidelines that apply to all employees of the Board. The appointment authority provided by this subsection is limited to the number of fulltime equivalent positions, in addition to 1 senior professional staff at the GS-15 level and 1 administrative staff, allocated each member through the Board's annual budget and allocation process.''.

(e) BOARD APPROVAL.—Section 1113(c) of title 49, United States Code, is amended by inserting ''The Board shall develop and approve a process for the Board's review and comment or approval of documents submitted to the President, Director of the Office of Management and Budget, or the Congress under this subsection.'' after ''Congress.''.

(f) INVESTIGATION TRACKING SYSTEM.—Within 6 months after the date of enactment of this Act, the National Transportation Safety Board shall develop and implement a process or system available to all Board members that tracks the status and activities associated with all ongoing and pending investigations undertaken by the Board, including the expected completion date, staff assignments, and such other information as the Board may require for the investigations.

(g) INVESTIGATIVE OFFICERS.—Section 1113 of title 49, United States Code, is amended by adding at the end thereof the following:

''(h) INVESTIGATIVE OFFICERS.—The Board shall maintain at least 1 fulltime employee in each State located more than 1,000 miles from the nearest Board regional office to provide initial investigative response to accidents the Board is empowered to investigate under this chapter that occur in those States.''.

SEC. 5. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents

''(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the National Transportation Safety Board Reauthorization Act of 2006, Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

''(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

''(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

''(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

''(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

''(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

''(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the

passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

''(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

''(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

''(c) USE OF INFORMATION.—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

''(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

''(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

''(f) FUNDING.—There shall be made available to the Secretary of Transportation for the use of Amtrak $500,000 for fiscal year 2007 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''24316. Plan to assist families of passengers involved in rail passenger accidents.''.

SEC. 6. INSPECTOR GENERAL OF THE NATIONAL TRANSPORTATION SAFETY BOARD.

(a) IN GENERAL.—Section 1137 of title 49, United States Code, is amended to read as follows:

''§ 1137. Designation of the Department of Transportation Inspector General as Inspector General of the National Transportation Safety Board

''(a) ESTABLISHMENT OF INSPECTOR GENERAL OF THE NATIONAL TRANSPORTATION SAFETY BOARD.—In order to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in the programs, operations, and activities of the National Transportation Safety Board, the Inspector General of the Department of Transportation shall serve as the Inspector General of the National Transportation Safety Board.

''(b) AUTHORITY OF THE INSPECTOR GENERAL.—

''(1) The Inspector General shall exercise such authority as provided by the Inspector General Act of 1978, and other applicable laws, over Board programs, operations and activities not directly associated with specific accident investigations or adjudications, including—

''(A) financial management, property management, and business operations, including internal accounting and administrative control systems;

''(B) information management and security, including privacy protection of personally identifiable information;

''(C) resource management;

''(D) workforce development;

''(E) procurement and contracting planning, practices and policies;

''(F) malfeasance in office by Board employees and contractors; and

''(G) allegations of false statements, fraud, and other criminal activity within the jurisdiction of the Board.

''(2) In consultation with the Senate Committee on Commerce, Science, and Transportation or the House Committee on Transportation and Infrastructure Committee, the Inspector General may conduct an audit, investigation, or other review on matters not described in subparagraphs (A) through (G) of paragraph (1).

''(c) DUTIES.—In carrying out this section, the Inspector General shall—

''(1) report directly to the Chairman of the Committee and ensure that the Chairman is kept fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs, operations, and activities of the Board;

''(2) recommend to the Chairman corrective action concerning such problems, abuses, and deficiencies;

''(3) report to the Chairman on the progress made in implementing such corrective action; and

''(4) promptly notify the Chairman on any problems related to access for information or carrying out an audit or investigation.

''(d) INFORMATION PROVIDED TO BOARD MEMBERS.—The Inspector General and Chairman shall ensure that all members of the Board are informed of major work in progress through regular and periodic briefings and, as appropriate, on a timelier basis for matters of a significant nature.

''(e) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for use by the Inspector General of the Department of Transportation such sums as may be necessary to cover expenses associated with activities pursuant to the authority exercised as the Inspector General of the Board. In the absence of an appropriation, the Inspector General and the Board shall have a reimbursable agreement to cover such expenses.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 11 of title 49, United States Code, is amended by striking the item relating to section 1137 and inserting the following:

''1137. Designation of the Department of Transportation Inspector General as Inspector General of the National Transportation Safety Board''.

SEC. 7. AUDIT PROCEDURES.

The National Transportation Safety Board, in consultation with the Inspector General, shall continue to develop and implement comprehensive internal audit controls for its operations. The audit controls shall, at a minimum, address Board asset management systems, including systems for accounting management, debt collection, travel, and property and inventory management and control.

SEC. 8. DOT INSPECTOR GENERAL TO INVESTIGATE CENTRAL ARTERY PROJECT CONTRACTORS AND OVERSIGHT AGENCIES.

(a) IN GENERAL.—The Inspector General of the Department of Transportation shall investigate the contractors involved in the development and construction of the Central Artery tunnel project in Boston, Massachusetts, and the public agencies that oversaw their work, including the Massachusetts Turnpike Authority and the Federal Highway Administration.

(b) PRIORITIES AND PROCEDURE.—In carrying out the mandate provided by subsection (a), the Inspector General shall—

(1) oversee any investigations related to the collapse of ceiling plates in the tunnel on July 10, 2006;

(2) oversee a comprehensive review of the safety of the Central Artery project; and

(3) audit and investigate parties involved in the construction, maintenance, and oversight of the Central Artery project, including the Massachusetts Turnpike Authority and the Federal Highway Administration, in order to determine whether the collapse of ceiling plates in the tunnel on July 10, 2006, resulted from whether poor planning, development, construction, or other factors.

SEC. 9. IMPLEMENTATION OF NTSB'S ''MOST WANTED TRANSPORTATION SAFETY IMPROVEMENTS, 2006''.

Within 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure explaining why the Federal Aviation Administration has not implemented the aviation recommendations in the NTSB's ''Most Wanted Transportation Safety Improvements, 2006''.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 1118(a) of title 49, United States Code, is amended—

(1) by striking ''and'' after ''2005,''; and

(2) by striking ''2006.'' and inserting ''2006, $79,594,000 for fiscal year 2007, and $84,382,432 for fiscal year 2008.''.

(b) EMERGENCY FUND.—Section 1118(b) of title 49, United States Code, is amended to read as follows:

''(b) EMERGENCY FUND.—There are authorized to be appropriated for necessary expenses of the Board, not otherwise provided for, for accident investigations amounts sufficient to maintain the emergency fund at a level not to exceed $4,000,000, such sums to remain available until expended.''.

(c) FEES, REFUNDS, AND REIMBURSEMENTS.—

(1) IN GENERAL.—Section 1118(c) of title 49, United States Code, is amended—

(A) by striking ''ACADEMY.—'' and inserting ''FEES, REFUNDS, AND REIMBURSEMENTS.—'';

(B) by striking paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively, and resetting each such paragraph 2 ems from the left margin;

(C) by striking paragraph (1), as redesignated, and inserting the following:

''(1) IN GENERAL.—The Board may impose and collect such fees, refunds, and reimbursements as it determines to be appropriate for services provided by or through the Board.'';

(D) by striking ''fee'' the first place it appears in paragraph (2), as redesignated, and inserting ''fee, refund, or reimbursement''; and

(E) by striking ''imposed;'' in subparagraphs (A) and (B) of paragraph (2), as redesignated, and inserting ''imposed or with which the refund or reimbursement is associated;''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on October 1, 2005.

(d) REPORT.—Section 1118(d) of title 49, United States Code, is repealed.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee-reported amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

RAILROAD RETIREMENT TECHNICAL IMPROVEMENT ACT OF 2006

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 630, H.R. 5074.

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

The legislative clerk read as follows:

A bill (H.R. 5074) to amend the Railroad Retirement Act of 1974 to provide for continued payment of railroad retirement annuities by the Department of the Treasury, and for other purposes.

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

Mr. FRIST. Mr. President, I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The bill (H.R. 5074) was ordered to be read a third time, was read the third time, and passed.

Mr. DURBIN. Mr. President, will the majority leader yield?

Mr. FRIST. I am happy to yield.

Mr. DURBIN. Mr. President, I would like to say to the majority leader by way of a question that I have been working with Senator CHAMBLISS, the chairman of the Agriculture Committee, on the reauthorization of the Commodity Futures Trading Commission, and we have worked out what I consider to be a fair apportionment of time and amendments. We have been ready to go, prepared, waiting for that propitious moment, hoping that the majority leader would smile our way and give us that opening, that hour or two to get this important legislation passed. I would like to ask the majority leader if he has been thinking about that.

Mr. FRIST. Mr. President, through the Chair, in fact, I will need to turn to the distinguished assistant leader as to how much time—I remember we had it locked down to an amount of time. It is about 7½ or 8 hours. We have a challenging week. We have to get to the DOD appropriations, we have to get to the Homeland Security appropriations, we need to get to the terrorist tribunal legislation, we need to get to the port security legislation, and we need to get to the border fence legislation. We will do our best. I do understand the importance of the legislation, and I want to congratulate the managers and the chairman and ranking member for their great work. I do understand the importance of it.

Mr. DURBIN. Mr. President, if I might ask again of the majority leader—I certainly understand this might not be the week, but I hope when we return you would consider putting this up soon. I appreciate it, and I am sure Senator CHAMBLISS does as well.

Mr. FRIST. Mr. President, I recognize the importance of the issue, and we are doing our best to get everything we possibly can done.

ORDERS FOR TUESDAY, SEPTEMBER 26, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Tuesday, September 26. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business for up to an hour with the first 30 minutes under the control of the majority leader or his designee, and the final 30 minutes under the control of the Democratic leader or his designee; further, that following morning business, the Senate resume consideration of H.R. 6061, the Border Fence Act. Further, I ask unanimous consent that the Senate stand in recess from 12:30 until 2:15 to accommodate the Democratic policy luncheon; I further ask that it be in order to file first-degree amendments as provided for under rule XXII until the hour of 2:30 on Tuesday.

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

PROGRAM

Mr. FRIST. Mr. President, I just went through a host of issues that we need to consider over the course of this week and our intention to complete our work by Friday or Saturday. It is going to take cooperation, and everybody is working together, as the Democratic leader and I implied a few minutes ago, in how we will address the legislation surrounding the military tribunals. Again, we did file, or I just a few moments ago filed cloture on the Hamdan language as well as on the underlying border security bill. We will work, as we just discussed on the floor, very hard to come to an agreement on how we can address the Hamdan legislation with the appropriate number of amendments. The first of these votes would occur Wednesday morning, as the Democratic leader pointed out, and as I said earlier. If we are able to get an agreement, we could actually be voting tomorrow.

Mr. LEVIN. Will the majority leader yield for a question?

Mr. FRIST. I would be happy to.

Mr. LEVIN. Is the Hamdan language which has been filed in the amendment the same as the Hamdan language that was agreed upon by the three Republican Senators with the administration?

Mr. FRIST. Yes. Yes, it is. I think what the Democratic leader said is that there are some changes, but as to what was introduced—Friday, I believe? Friday—so there are some small changes in that, but it has been agreed to by all the parties concerned.

Mr. LEVIN. In your judgment there is no substantive change between that amendment and the language that was agreed upon?

Mr. FRIST. That is correct.

Mr. LEVIN. I thank the majority leader.

Mr. FRIST. The reason I am turning around is, as the Democratic leader said, people have been working very aggressively since the agreement was reached. And every change, we have really tried to go to both sides—to the House, to the Senate, to the administration—so that we can have as much agreement as we possibly can on this bill. So the changes that have been made have been minor, as just reported to me.

Mr. REID. Mr. President, if the majority leader would, when he completes the motion to close for the night—if he would allow the Senator from Illinois to speak for 15 minutes, prior to our going out?

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

Mr. REID. As in morning business.

ORDER FOR ADJOURNMENT

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order, following the remarks, up to 15 minutes, as in morning business, by our distinguished colleague from Illinois.

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

The Senator from Illinois.

HEARING ON THE IRAQ WAR

Mr. DURBIN. Mr. President, I thank the majority leader and the Democratic leader for their cooperation in asking for this short period of time.

Mr. President, today there was a hearing that was held by the Democratic Policy Conference under the chairmanship of Senator BYRON DORGAN of North Dakota. It was a historic hearing. It is rare for hearings to occur on Mondays. Usually the business of the Senate and House is concentrated on Tuesday, Wednesday, and Thursday. But this hearing was held on Monday in an effort, by the Democratic Policy Conference, to call witnesses before our Senate to discuss an issue which is on the mind of most Americans. That issue, of course, is the war in Iraq.

Senator DORGAN extended an invitation to this hearing to the Republican majority leader as well as the chairman of the Republican Conference, Senator KYL of Arizona, in an effort to have a bipartisan hearing on the war in Iraq. Unfortunately, neither of those Senators could attend. But Republican Congressman WALTER JONES of North Carolina did come over and join us in this hearing, so there was representation from the Republican House and Democratic Senators at this Democratic Policy Conference.

The reason I bring this to the attention of those who are following the business of the Senate is that I believe this hearing was historic. I believe it is

the first time since our invasion of Iraq that we had an opportunity to hear from generals and officers who were in Iraq, who worked on that war and were willing to give us a critique, an analysis of their experience and their view of where we are today.

MG John Batiste from the U.S. Army, retired; MG Paul Eaton, U.S. Army, retired; and COL Hammes of the U.S. Marine Corps, retired, came and testified about what has gone wrong in the war in Iraq and what we need to do from this time forward. One might think, if you listen to the talk shows, that this is common fare in the Senate, but it is not. In fact, it is one of the few times, if any, that we have allowed an oversight hearing on the policy in Iraq.

If you chart the history of this country through our great wars, starting with the Civil War and forward, it is not uncommon for this Congress, regardless of party, to bring the leaders in that war to Washington to ask them questions about the progress that is being made. But, sadly, since the invasion of Iraq, that has not been the course of action.

What we have found, time and time again, is that this Congress has called before it for testimony those at the highest levels of the administration. Of course, the Secretary of Defense, the Under Secretaries, and the generals in the highest command are brought forward. But we never reach the next tier and the next rank and the next level because the perspective changes. The perspective of these men who testified today was the perspective of those who had been in charge of important operations in Iraq and had the responsibility of carrying out a mission and protecting the lives of American soldiers that were at risk.

What they had to say was chilling. In stark testimony, each of these officers, now retired from service, having attended West Point and graduated, having attended Annapolis and graduated, said the first and highest priority that we had as a nation was to change the leadership at the Department of Defense. They felt the approach that is being taken by Secretary Rumsfeld and those in his close-knit team was inconsistent with success and victory in Iraq.

They told of their own personal experiences when they would question some of the decisions that were made by the administration and by Secretary Rumsfeld, only to find that they were ignored or shunned. These generals gave eye-opening testimony, testimony that I wish every Member of the Senate could have heard. These were good witnesses to call—good witnesses because the members of the Armed Services Committee should hear their testimony. All of the Senators should hear that testimony, when they talk about what we face.

When Colonel Hammes of the U.S. Marine Corps, now retired, said he expects the United States to be in Iraq for another decade, 10 years or more; when we hear from each of these officers that we have not provided the necessary troops in the field to accomplish our mission; when each of them reflects on our efforts to build the Iraqis into an army that can defend its own country and then says that the United States would not invest the resources to build the Iraqi Army at that critical moment in its history and now is paying a price for it—their testimony, which was covered by major news media, will be reported by some but should be reported to all the Members of the Senate.

We have a responsibility in the Senate and in the House. We serve as that third branch of Government with a checks and balances system to be involved in the appointment of judges but, yes, to serve in oversight of the executive branch.

Unfortunately, that has not been the case over the last 4 years during the course of this war. Very few, if any, Senators have stepped forward to question this administration's policy in Iraq. The Republican leaders in the Senate have not scheduled hearings with officers and former officers who could give us firsthand, candid, honest testimony about what is going right and what is going wrong. There is a fear in this administration of hearing unpopular expressions from those who have served in our military.

We owe it to our soldiers; we owe it to our Marines, our airmen, our sailors, and all who serve under America's flag, and we owe it to their families to ask the hard questions, to demand the answers from this administration.

Before the hearing today I contacted the Department of Defense for an update, an update on a very grim statistic. I asked how many American lives had been lost, our brave soldiers in Iraq. The number as of this morning: 2,702. Almost 20,000 have returned with serious injuries. We have spent over $325 billion on this war and continue to spend at the rate of $1.5 billion per week.

It is a grim reminder of what this war has cost, first and foremost in human life, but also in human suffering—the prayers and anxieties of American families, those who have returned with injuries that they will deal with for a lifetime, and for taxpayers across the country who have seen our national deficit reach record levels as this administration refuses to accept the honest assessment of the cost of this war and to tell the American people the sacrifices that must be made for us to come home with our mission truly accomplished: 2,702 of our soldiers.

That hearing was important. I am glad that Congressman WALTER JONES came over so that it was a bipartisan hearing. But it is time for more. It is time for us to bring those officers and soldiers before us who are living this war in Iraq to tell us what is really happening on the ground. If there are ripoffs and profiteering by Halliburton and other companies, we should all take that personally. It is not only taxpayers' money wasted, it is money that is not being spent for the defense of our troops. It is money that is being misused when it could be used better so that our troops could get their job done, and done more effectively.

When Colonel Hammes of the U.S. Marine Corps talks about the deterioration of production capacity in the United States, he marvels at that time in history when we were producing 4,000 planes a month, during World War II, and now we find, for the best armored vehicle that we need to move our troops, the best America can do is produce 48 a month? It is a good, valid question: why this war effort has not meant more dedication from our elected officials and the public sector as well as the private sector.

It is interesting that each of these military leaders pointed a finger at Congress and at political leaders as well. All the criticism was not reserved just for the Secretary of Defense and military planners who brought us into this war. They said to us in stark terms that we have not communicated to the American people what it will take to win. They believe, and I share their belief, that the American people, when challenged, will rise to the challenge. We have done it time and again throughout our history.

This hearing, which lasted a little over 2 hours, attracted a number of Senators and Congressman JONES from the House and should have taken place a long time ago. As Major General Batiste said—he has been out of the military after 30-plus years of service. He has been critical of what has happened. Today was the first time anyone had invited him to Capitol Hill to testify. We need to bring in these men and women who will share with us the responsibility of holding our Government and our leaders accountable in time of war.

When so many lives are at stake, when so much is at stake, this Congress has to rise to the challenge and rise to the occasion. Unfortunately, that has not occurred. We have done little or nothing when it comes to accountability for taxpayer dollars, for the course of this war and strategy, and most importantly for the lives that have been lost. We can do better.

We need a new direction when it comes to our policies in Iraq, a direction which doesn't call for immediate withdrawal but a direction which says there will come a day—and soon—when American troops can come home with their mission accomplished. And it is time for us to begin to initiate that conversation.

I thank Senator DORGAN for those who attended today. I think it was time well spent.

I hope, when we return after this election on November 7, we can in a bipartisan fashion have real oversight of this war, ask those important questions which our troops deserve to have

answered, ask the important questions our taxpayers need to have answered about the cost of this conflict, and ask those important questions as to how we can reach a time—and soon—when our soldiers can return home victorious, with their mission truly accomplished.

I yield the floor.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:45 a.m. tomorrow.

Thereupon, the Senate, at 7:15 p.m., adjourned until Tuesday, September 26, 2006, at 9:45 a.m.

DISCHARGED NOMINATION

The Senate Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of the following nomination and the nomination was confirmed:

CHARLES F. CONNER, OF INDIANA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION.

CONFIRMATIONS

Executive nominations confirmed by the Senate Monday, September 25, 2006:

DEPARTMENT OF AGRICULTURE

CHARLES F. CONNER, OF INDIANA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION.

THE JUDICIARY

FRANCISCO AUGUSTO BESOSA, OF PUERTO RICO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO.