As an article in Time magazine recently noted, a number of these ''concerned local citizens'' militias, organized and supported by the U.S. military, are now turning on each other in a contest for influence and territory. The Shia-led central government views these armed militias as undermining its central authority and has balked at integrating large numbers of Sunnis into the national Iraqi security forces. So at this point we must ask ourselves whether the U.S. Government, in service of a worthy but short-term objective of suppressing violence in Iraq, is only paving the road for a large-scale future conflict by arming sectarian groups separate from the national army and police. That is an important question we must consider.

Let me say, Mr. President, sometimes short and telling anecdotes tell a story. We have read recently that the Iranian President, Mr. Ahmadinejad, will make a visit to Baghdad next week for talks with Prime Minister al-Maliki and other officials. This visit has already been announced, with details of his itinerary available to the press and the public. By sharp contrast, when President Bush, Secretary Rice and/or Secretary Gates visit Iraq, they travel to Baghdad unannounced and rarely leave the fortified walls of the Green Zone.

Another example. When Senator DURBIN and I visited Iraq last August, we flew from the airport to the Green Zone in low-flying, fast-moving helicopters practicing evasive maneuvers. Here is a question we should ask ourselves: Why can the Iranian President drive in an open manner into Baghdad while U.S. leaders must sneak into the country under the cloak of darkness? Five years into our occupation of Iraq, what does this say about our role in Iraq and the security of that nation?

As Iraq continues to dominate the attention and resources of our Government, it clouds and confuses our long-term U.S. strategic priorities. I remain troubled, as so many others here remain troubled, that a ''Declaration of Principles'' signed on November 26, 2007, by President Bush and Prime Minister al-Maliki commits our Nation to ''providing security assurances and commitments to the Republic of Iraq to deter future aggression against Iraq that violates its sovereignty and integrity of its territories, waters, or airspace.'' That is what the Declaration of Principles says in part.

Although Secretary Rice assured me during a recent Senate Foreign Relations hearing that no such commitments will be extended to Iraq, I remain deeply skeptical. In concert with my colleagues, I will continue to exercise vigorous oversight to ensure that President Bush does not lock the United States into a binding and long-term security commitment to Iraq.

It is time to refocus our energies and our efforts on the ''forgotten war'' in Afghanistan. Our focus on Iraq has distracted from and undermined the central front in the war on terrorism.

ADM Mike Mullen, the Chairman of the Joint Chiefs of Staff, recently testified before Congress, and he said:

> In Afghanistan, we do what we can. In Iraq, we do what we must.

With all due respect to Admiral Mullen, he has it wrong. We should do what we must in both places.

We know that 6 years ago America was fighting and winning the war in Afghanistan, and al-Qaida and the Taliban were on the run. But instead of staying and accomplishing our mission in Afghanistan by hunting down those who planned the 9/11 attacks, this administration diverted our attention to Iraq. Today, the Taliban has returned with a vengeance and controls more territory than at any time since its ouster in 2001. Afghanistan is on the brink of becoming yet again a failed state and thus a safe haven for al-Qaida to launch deadly attacks, including against the American homeland.

Three recent bipartisan reports on Afghanistan concluded that the situation on the ground is dire. One report, coauthored by retired general Jim Jones and Ambassador Thomas Pickering, puts it bluntly, and I quote in part:

> The progress achieved after 6 years of international engagement is under serious threat from resurgent violence, weakening international resolve, mounting regional challenges, and a growing lack of confidence on the part of the Afghan people about the future direction of their country. The United States and the international community have tried to win the struggle in Afghanistan with too few military forces and insufficient economic aid, and without a clear and consistent comprehensive strategy.

That is the Jones and Pickering report from which I am quoting.

When Secretary of Defense Gates is forced to go public with criticisms of the refusal of our NATO allies to deploy more forces in Afghanistan and his skepticism of their ability to conduct counterinsurgency operations, we must admit that the situation on the ground is getting worse in Afghanistan, not better. Military officials expect the coming year to be even more deadly, as the Taliban becomes more deadly and deploys greater numbers of suicide bombers and roadside explosives. U.S. forces remain largely isolated in Afghanistan, with key NATO allies refusing to provide ground support and imposing onerous restrictions on where and how they can fight. The end result is that the very future of NATO, the most successful alliance in modern history, is now in grave danger.

In a welcome display of straight-talk, Secretary Gates admitted that the very reason large segments of the European public do not support NATO operations in Afghanistan is due to their antipathy toward U.S. policy in Iraq. Secretary Gates recently asserted in Munich:

> Many of them, I think, have a problem with our involvement in Iraq and project that to Afghanistan, and do not understand the very different—for them—the very different kind of threat.

That is what Secretary Gates said recently.

Mr. President, let me conclude with this thought: The war in Iraq has indeed strained our military, limiting the number of combat divisions we can provide in Afghanistan. It has undermined our global leadership, depriving us of the moral authority to demand more of our allies, and it has diverted the attention of our senior military and civilian leadership, allowing the Taliban to mount a comeback under our very eyes. We are losing a war we cannot afford to lose in a futile and misguided effort to force success in another conflict that can only be won politically, not militarily. Our priorities are tragically mistaken, and our Nation is paying a severe cost.

Mr. President, I yield the floor, and 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. CASEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

AUTHORIZATION FOR REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. REID. Mr. President, S. Res. 460 concerns a civil action filed in the U.S. District Court for the District of Columbia. The National Association of Manufacturers is challenging the constitutionality of section 207 of the Honest Leadership and Open Government Act of 2007, which amended the Lobbying Disclosure Act of 1995 to strengthen the reporting requirements for coalitions and associations that engage in lobbying activities.

As amended, the law mandates that registrants disclose the members of their organization that contribute more than $5,000 in a quarterly period to the lobbying activities of the organization and ''actively participate in the planning, supervision, or control of such activities.'' Under prior law, disclosure was required of those members who contributed at least $10,000 for lobbying semiannually but only if those members ''in whole or in major part'' planned, supervised, or controlled such lobbying activities.

The plaintiff National Association of Manufacturers alleges that its members face sustained injury to their first amendment rights, including their right to anonymous policy speech, and seeks to prevent the enhanced disclosure requirements from taking effect

on the initial quarterly period filing date, April 21, 2008.

NAM named as defendants the U.S. attorney for the District of Columbia, the Secretary of the Senate, and the Clerk of the House. The Secretary and the Clerk are responsible for providing guidance and assistance on lobbying disclosure requirements, receiving lobbying registration and report filings, reviewing, inquiring, and verifying the accuracy of the filings without investigating, notifying lobbyists that appear not to be in compliance with the law, and notifying the U.S. attorney of lobbyist who have been so notified and have failed to submit an appropriate response. The U.S. attorney has the duty to enforce the disclosure requirements through civil, and, under the new law, criminal, actions.

This resolution authorizes the Senate legal counsel to represent the Secretary of the Senate to defend the constitutionality of the lobbying disclosure amendment in the Honest Leadership and Open Government Act and to seek dismissal of the action, in conjunction with counsel for the House of Representatives and the Department of Justice.

Senate counsel will present to the court the bases for the Congress's judgment, after more than a dozen years of experience under the Lobbying Disclosure Act, that enhanced reporting requirements are necessary to inform Congress and the public of the identity of those organizations actively participating in lobbying the Federal Government. As Justice Louis Brandeis famously wrote, ''Sunlight is said to be the best of disinfectants.''

The lobbying amendments enacted last year were an important part of the Congress's efforts to restore public confidence through integrity and openness in Government and lobbying activities. Disclosure of the identities of organizations that actively participate in supervising or planning lobbying campaigns will yield a sizable public benefit while imposing a modest burden on the exercise of the right of organizations such as the National Association of Manufacturers freely to associate to petition the Government in furtherance of their legislative agenda.

REMEMBERING DENISE ANN PHOENIX

Mr. REID. Mr. President, I rise today to recognize Denise Ann Phoenix, a role model, native Nevadan, and hero. Ms. Phoenix, known by her nickname ''Auntie,'' devoted her life to improving her Native American community and promoting child safety. Following in the footsteps of her father, Leroy Phoenix, Sr., she pursued a career in law enforcement and became one of few women to serve as an investigator with the Bureau of Indian Affairs. She died in the line of duty on February 14, 2008, after coming into contact with an unidentified substance and contracting a fatal lung disease. She was 42 years old.

Ms. Phoenix grew up on the Pyramid Lake Paiute Reservation in northern Nevada. After graduating from Sparks High School, she began her career as a tribal ranger on the reservation and later became BIA chief of police of Carson City, NV. She emphasized the importance of community-oriented policing and her service was exemplary. She will continue to be an inspirational example to young Native American women.

The dedication Ms. Phoenix demonstrated as an officer was complemented by her dedication to children. In 2000, she lost her own children, Shasta and Justin, along with her brother Ronald, to a car accident along the Pyramid Highway in Sparks, NV. In response to this devastating tragedy, she established youth outreach programs in her children's memory. She was also instrumental in getting a median divider installed on the stretch of road where the accident occurred, once again showing her profound commitment to the safety of others.

Though I am saddened by her passing, I share with this body my gratitude for her devotion to her community. I also extend to her family, friends, and colleagues my condolences.

PRESERVE ACCESS TO AFFORDABLE GENERICS ACT

Mr. KYL. Mr. President, I ask unanimous consent to have the following letter from the Justice Department commenting on S. 316, the Preserve Access to Affordable Generics Act, printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF, LEGISLATIVE AFFAIRS,
Washington, DC, February 12, 2008.

Senator Jon Kyl,
U.S. Senate,
Washington, DC.

DEAR SENATOR KYL: This responds to your request for the Department's views regarding the competitive implications of S. 316, the ''Preserve Access to Affordable Generics Act.'' S. 316 addresses the issue of reverse payments associated with the settlement or resolution of an infringement lawsuit in the context of the Hatch-Waxman Act. The bill would make it a per se violation of the antitrust laws to be a party to an agreement in which an Abbreviated New Drug Application (ANDA) filer receives value and agrees not to research, develop, manufacture, market, or sell the ANDA product for any period of time. The Department believes that the bill addresses a serious competition issue, but, for the reasons discussed below, the Department has concerns with this bill as drafted.

As an initial matter, there is the potential for such settlements to be anticompetitive. For example, if the potential losses in profits due to increased competition from entry by the ANDA filer are large, the ANDA filer may be persuaded to drop a strong claim of patent invalidity or non-infringement in return for significant payments. As described below, however, settlements between an ANDA filier and the patent holder also can benefit consumer welfare. Accordingly, the Department of Justice does not believe per se liability under the antitrust laws is the appropriate standard. Per se liability generally is reserved for only those agreements that unequivocally have an anticompetitive effect, while a rule of reason analysis is better suited to instances when the economic impact of the agreement is less certain. In this context, per se illegality could increase investment risk and litigation costs to all parties. These factors run the risk of deterring generic challenges to patents, delaying entry of competition from generic drugs, and undermining incentives to create new and better drug treatments or studying additional uses for existing drugs.

The United States has a strong policy of encouraging settlement of litigation. A settlement reduces the time and expense of litigation, which can be quite substantial. Further, it reduces the uncertainty associated with the pending litigation. A settlement can thereby free up management time and resources and reduce risk, enabling a company to focus on developing new and better products.

The Hatch-Waxman Act context presents a distinct set of circumstances, but settlements creates a structure designed to encourage generic drug makers to challenge these patent rights by asserting either that the relevant patents are not valid or that the generic version would not infringe the patents. Among other things, the Hatch-Waxman Act provides an opportunity for the generic company and the patent holder to litigate those issues prior to the generic's launch of a potentially infringing product. Thus, unlike most patent litigation in which the patent holder has a claim for damages, the patent holder in the Hatch-Waxman context typically has no claim for damages because the generic company has not yet launched a product.

In any patent litigation, the principle means available to the patent holder to induce the generic company to settle the litigation is to offer something of value. If the patent holder has a damages claim for infringement, it can offer to reduce or waive its damages. However, in the Hatch-Waxman context the patent holder typically has no damages claim, so its only means of offering value to induce a settlement is to offer to transfer something of value, such as cash or other assets. Under S. 316, the only value that a patent holder could offer to settle a patent infringement claim would be ''the right to market the ANDA product prior to the expiration of the patent'' at issue (i.e., waiving its patent rights in whole or in part). The per se liability under S. 316 eliminates any other transfer of value if the settlement also includes a provision requiring the generic company to respect for any period of time the patent holder's right to exclude under the patent. The net result may be to reduce the likelihood of potentially beneficial settlements and to increase the risk that a generic company would need to litigate a case to judgment (and through an appeal in many instances). Patent holders would face greater disincentives to investing in research and development of new and better treatments if they had to litigate every challenge to a judgment and through an appeal. Further, such litigation can take many years to complete and will divert the time, attention and resources of both parties during that time.

Settlement should not serve as a vehicle to enable patent holders to preserve or expand invalid or non-infringed patents by dividing anticompetitive profits with settling challengers. However, the public policy favoring settlements, and the statutory right of patentees to exclude competition within the scope of their patents, would potentially be