

too stale to contribute to a finding of probable cause. Although I do not agree with Mr. Kornblum's interpretation of the law, I am confident that the changes contained in the Counterintelligence Reform Act will make it clear that activities within a reasonable period of time can be considered in determining probable cause.

The investigation of Dr. Lee was also mishandled in the field, where the FBI and the Department of Energy often failed to communicate. For example, after OIPR rejected the FBI's 1997 FISA application, the FBI told the Department of Energy that there was no longer an investigative reason to leave Dr. Lee in place, and that the DoE should do whatever was necessary to protect the national security. Unfortunately, no action was taken by DoE until December 1998, some 14 months after the FBI had said it was no longer necessary to have him in place for investigative reasons.

To address this problem, and to ensure that there is no misunderstanding about when the subject of an espionage investigation should be removed from classified access, the Counterintelligence Reform Act requires that decisions of this nature be communicated in writing. The bill requires the Director of the FBI to submit to the head of the department or agency concerned a written assessment of the potential impact of the actions of the department or agency on a counterintelligence investigation. The head of the affected agency will be required to respond in writing to the recommendation of the FBI. This requirement will ensure that what happened in the Wen Ho Lee case—where the FBI said he could be removed from access but the Energy Department didn't pull his clearance for another 14 months—won't happen again.

To avoid the kind of problems that happened when the DoE ordered a Wackenhut polygraph in December 1998, this legislation prohibits agencies from interfering in FBI espionage investigations.

The provisions of this bill will make an important contribution to improving the way counter-intelligence investigations are conducted. The subcommittee's investigation of the Wen Ho Lee case has made it abundantly clear that improvements in these procedures are necessary, and the reforms outlined in this legislation are specifically tailored to provide real solutions to real problems.

The subcommittee also looked at the espionage case of Dr. Peter Lee, who pleaded guilty in 1997 to passing classified nuclear secrets to the Chinese in 1985. According to a 17 February 1998 "Impact Statement" prepared by experts from the Department of Energy,

The ICF data provided by Dr. [Peter] Lee was of significant material assistance to the PRC in their nuclear weapons development

program. . . . For that reason, this analysis indicates that Dr. Lee's activities have directly enhanced the PRC nuclear weapons program to the detriment of U.S. national security.

Dr. Peter Lee also confessed to giving the Chinese classified anti-submarine warfare information on two occasions in 1997. Under the terms of the plea agreement the Department of Justice offered to Peter Lee, however, he got no jail time. He served one year in a half-way house, did 3,000 hours of community service and paid a \$20,000 fine. Considering the magnitude of his offenses and his failure to comply with the terms of the plea agreement—which required his complete cooperation—the interests of the United States were not served by this outcome.

The subcommittee's review of the Peter Lee case led to the inevitable conclusion that better coordination between the Department of Justice, the investigating agency—which is normally the FBI—and the victim agency is necessary to ensure that the process works to protect the national security. One of the problems we saw in this case was the reluctance of the Department of the Navy to support the prosecution of Dr. Peter Lee. A Navy official, Mr. John Schuster, produced a memo that seriously undermined the Department of Justice's efforts to prosecute the case. This memorandum was based on incomplete information and did not reflect the full scope of what Dr. Peter Lee confessed to having revealed. As a consequence of the breakdown of communications between the Navy and the prosecution team, the 1997 revelations were not included as part of the plea agreement.

This legislation contains a provision that will ensure better coordination in espionage cases by requiring the Department of Justice to conduct briefings so that the affected agency will understand what is happening with the case, and will understand how the Classified Information Procedures Act, or CIPA, can be used to protect classified information even while carrying out a prosecution. In these briefings Department of Justice lawyers will be required to explain the right of the government to make in camera presentations to the judge and to make interlocutory appeals of the judge's rulings. These procedures are unique to CIPA, and the affected agency needs to understand that taking the case to trial won't necessarily mean revealing classified information. The Navy's position, as stated in the Schuster memo, that "bringing attention to our sensitivity concerning this subject in a public forum could cause more damage to the national security that the original disclosure," was simply wrong. It was based on incomplete information and a misunderstanding of how the case could have been taken to trial without endangering national security. The

provisions of this legislation which require the Department of Justice to keep the victim agency fully and currently informed of the status of the prosecution, and to explain how CIPA can be used to take espionage cases to trial without damaging the national security, will ensure that the mistakes of the Peter Lee case are not repeated.

I appreciate the efforts of my colleagues on the Judiciary Committee and the Senate Select Committee on Intelligence who have worked with me and the cosponsors of this bill. I am confident that the reforms we are about to pass will significantly improve the way espionage cases are investigated and, if necessary, prosecuted.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. LOTT. Mr. President, I ask unanimous consent that following the vote relative to the H-1B bill and the visa waiver bill on Tuesday, the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar, en bloc: No. 652, Michael Reagan; No. 654, Susan Bolton; and No. 655, Mary Murguia.

I further ask unanimous consent that following the en bloc consideration, the following Senators be recognized to speak for the allotted timeframes. They are: Senator HATCH for 20 minutes; Senator KYL for 20 minutes; Senator LOTT or designee for 20 minutes; Senator LEVIN for 20 minutes; Senator ROBB for 10 minutes; Senator HARKIN for 30 minutes; Senator LEAHY for 20 minutes; and Senator DURBIN for 10 minutes.

I further ask unanimous consent that following the use or yielding back of time, the nominations be temporarily set aside.

I also ask unanimous consent that following that debate, the Senate then proceed to the nomination of Calendar No. 656, James Teilborg, and there be up to 1 hour each for Senators HATCH, KYL, and LEAHY, and up to 3 hours for Senator HARKIN or his designee, and following the use or yielding back of the time, the Senate proceed to vote in relation to that nominee, without any intervening action or debate, to be followed immediately by a vote en bloc in relation to the three previously debated nominations. I further ask consent that the vote count as three separate votes on each of the nominations.

Finally, I ask consent that following the confirmation votes, the President be immediately notified of the Senate's action and the Senate then return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object, I ask the distinguished majority leader, in good faith, if he would modify his unanimous consent request to discharge the Judiciary Committee on further consideration of the nomination of Bonnie Campbell, the nominee for the Eighth Circuit Court, and that her nomination be considered by the Senate under the same terms and at the same time as the nominees included in the majority leader's request?

I ask the majority leader if he would modify his request.

Mr. LOTT. Mr. President, I understand the Senator's interest in that additional nomination. I do not think I have ever moved to discharge the Judiciary Committee on a single nomination or a judge. There are other judges presumably that will also need to be considered. I do appreciate the agreement that has been reached here. I know that it has been difficult for the Senator from Iowa to even agree to this. But in view of the fact that the committee has not acted, I could not agree to that at this time, so I would have to object.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Mr. President, further reserving the right to object for just one more, again, I just want to say to the majority leader that on some of these nominees—I think maybe three of them were nominated, got their hearings and were reported out of committee all within one week in July. Yet Bonnie Campbell from Iowa was nominated early this year. She has had her hearing, and has been sitting there now for four months without being reported out. I just find this rather odd. I haven't heard of any objections to bringing her nomination out on the floor.

I just ask the majority leader whether or not we can expect to have at least some disposition of Bonnie Campbell before we get out of here.

Mr. LOTT. I respond, Mr. President, that I do not get into the background of all the nominees when they are before the committee. I do not know all of the background on these nominees. As majority leader, when nominations reach the calendar, I try to get them cleared. I do think the fact that we had not been able to clear these four, even though they were already on the calendar, has maybe had a negative impact on other nominations being reported on the assumption that, well, if we could not move these, which were, I think, unanimously cleared quickly without any reservations, that that

had become an impediment. I do not know that this will remove that impediment, but it looks to me as if it is a positive step.

Mr. HARKIN. I just say to the leader, it seems odd we have a nominee that is supported by both of the Senators from her home State, on both sides of the aisle, on the Republican and Democratic side; and I think she is not getting her due process here in this body. I just want to make that point. I appreciate that.

Mr. LOTT. I say for the RECORD—and you know that it is true because I believe you were with me when he spoke to me—Senator GRASSLEY has indicated more than once his support for the nominee. So he has made it clear he does support her. I do not know all of the problems or if there are any. But perhaps further consideration could occur. I am sure you won't relent.

Mr. HARKIN. I plan to be here every day. I thank the leader.

The PRESIDING OFFICER. Is there objection to the majority leader's original request?

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. 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. KYL. Mr. President, I ask unanimous consent, on behalf of the leader, that the Senate now be in a period of morning business with Senators speaking for up to 10 minutes each.

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

TRIBUTE TO REAR ADMIRAL LOUIS M. SMITH, CIVIL ENGINEER CORPS, U.S. NAVY

Mr. LOTT. Mr. President, it is with great pleasure that I rise to take this opportunity to recognize the exemplary service and career of an outstanding naval officer, Rear Admiral Louis M. Smith, upon his retirement from the Navy at the conclusion of more than 33 years of honorable and distinguished service. Throughout his exemplary career, he has truly epitomized the Navy core values of honor, courage, and commitment and demonstrated an exceptional ability to advance the Navy's facilities requirements within the Department of Defense and the Congress. It is my privilege to commend him for a superb career of service to the Navy, our great Nation, and my home State of Mississippi.

Since September 1998, Rear Admiral Smith has served as the Commander, Naval Facilities Engineering Command, and Chief of Civil Engineers. As the senior civil engineer in the Navy, he is responsible for the planning, design, construction and maintenance of naval facilities around the globe. On Capital Hill, he is best known for his quick wit, entertaining and informative testimony, and ability to communicate the Navy's facilities requirements in addition to his role in developing and executing the Navy's Military Construction, Base Realignment and Closure and Environmental programs. He often testified before congressional committees and ensured that Members of Congress and their staffs fully understood the Navy's shore infrastructure requirements. In this capacity, Rear Admiral Smith was second to none.

Previously, he served as the Director, Facilities and Engineering Division for the Chief of Naval Operations where he had a hand in shaping the Navy's readiness ashore, as well as numerous quality-of-life initiatives to improve the lives of Sailors and Marines. A true shore facilities expert, his previous public works assignments included Assistant Public Works Officer, Naval Air Station, Brunswick, Maine; Public Works Officer, Naval Air Station, Keflavik, Iceland; and Commanding Officer, Public Works Center, San Diego, California.

As an acquisition professional, he has had numerous contracting assignments, including Officer-in-Charge of Construction, Mid Pacific, Pearl Harbor, Hawaii and Head of Acquisition and Vice Commander of Western Division, San Bruno, California. He embarked on his brilliant naval career as the Officer in Charge of Seabee Team 5301, making three deployments to Vietnam and earning the Bronze Star and Combat Action Ribbon.

The Navy will best remember Rear Admiral Smith for his mastery of the Navy's financial system and his prowess in effectively navigating the political waters within the Beltway. His eight tours in the Nation's Capital began with duty in the office of the Chief of Naval Operations as Facilities Engineer, Security Assistance Division (OP-63). After an exchange tour on the Strategic Air Command staff, he then served as the Director of the Chief of Naval Operations' Shore Activities Planning and Programming Division (OP-44), followed by a tour in the Office of the Comptroller of the Navy. Later, he served in the offices of the NAVFAC Comptroller and the Director of Programs and Comptroller, NAVFAC. After his Command tour in San Diego, he returned to NAVFAC Headquarters as Vice Commander and Deputy Chief of Civil Engineers. Rear Admiral Smith's knowledge of the Fleet, coupled with his unparalleled planning and