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Mr. President, the U.S. and NATO are right to move forward now to send a clear and forceful message to Milosevic that he can no longer brazenly defy world opinion. The brutal slaughter of innocent non-combatants in Kosovo must stop now. If it continues, the West must have the resolve to do what is necessary to bring it to an end. And, if necessary, I want to say as a U.S. Senator, I think there should be airstrikes.

I wanted to speak out before we leave and I want the RECORD to show that I have spoken out. I wish that the U.S. Senate had brought this matter up. Other Senators would have very different points of view, and I understand that. But it really troubles me, saddens me, that the Senate as a body has not had a thorough discussion and debate about what is a life-or-death matter. I wanted to at least have a chance to speak out. I thank my colleague from Oklahoma for giving me some time.

Mr. SPECTER. Parliamentary inquiry: I have been asked to propound a unanimous consent request which relates to another bill. Would it be in order at this time to ask unanimous consent that it may be considered separately?

The PRESIDING OFFICER. The Senator may make the request.

OPERATION DESERT SHIELD AVIATION CONTINUATION PAY

Mr. SPECTER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 2584.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2584) to provide aviator continuation pay for military members killed in Operation Desert Shield.

There being no objection, the Senate proceeded to consider the bill.

Mr. SPECTER. Mr. President, this legislation is introduced to correct a legislative inequity that has adversely affected one of my constituents, Mrs. Vicki Reid of Dauphin, Pennsylvania.

At the time of his death in Operation Desert Shield, Captain Frederick Reid was serving as a United States Air Force pilot. The Air Force had authorized an Aviator Continuation Pay contract contingent upon his continuing to serve in the Air Force. Unfortunately, on October 10, 1990, Captain Reid was killed during a flight training operation.

The Defense Department policy at the time was that one's death precluded receiving the continuation pay. Congress responded by enacting the Mack Amendment, under which families of pilots killed in action during Operation Desert Storm are entitled to the deceased pilot's Aviator Continuation Pay. This provision of the fiscal year 1992 Defense Appropriations Act (P.L. 102-172) stipulates that in order to collect the Aviator Continuation Pay, the pilot must have died during Operation Desert Storm (on or after January 17, 1991), but excludes those pilots killed in Operation Desert Shield.

By letter to me dated August 3, 1998 from Under Secretary Rudy De Leon, the Department of Defense has confirmed that Captain Reid was the only U.S. Air Force pilot killed in Operation Desert Shield who was entitled to Aviator Continuation Pay and that approximately $58,000 of Captain Reid's Aviator Continuation Pay was unpaid at the time of his death. In a September 11, 1998 letter to me, the Air Force has expressed its support for an extension of the Mack Amendment to cover the Reid case.

While private relief legislation is a last resort to be used sparingly by the Congress, Captain Reid's service and dedication to his country are laudatory. Had he died only a few months later, his widow would have been justly compensated. Accordingly, I am introducing this bill today.

Mr. President, I ask unanimous consent that a letter from the Department of Defense and a letter from the Air Force be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF DEFENSE,
UNDER SECRETARY OF DEFENSE,
Washington, DC, August 3, 1998.

Hon. ARLEN SPECTER,
U.S. Senate,
Washington, DC.

DEAR SENATOR SPECTER: This responds to your letter of July 2, 1998, to Secretary Cohen concerning Aviation Continuation Pay (ACP) due to pilots at the time of their death while serving in Operation Desert Shield.

A review of files pertaining to the members who died while serving in Desert Shield indicate that, of the eight pilots who died during that operation, only Captain Reid was serving under an ACP bonus contract at the time of his death. Approximately $58,000 of that bonus was left unpaid due to Captain Reid's death and would be payable to his widow should legislation be enacted to extend the Mack Amendment to P.L. 102-172 to cover members killed in Operation Desert Shield.

I appreciate the concern you have shown about this issue. Please contact me if you require any further information.

Sincerely,

RUDY DE LEON.

DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE AIR FORCE,
Washington, DC, September 11, 1998.

Hon. ARLEN SPECTER,
U.S. Senator,
Philadelphia, PA.

DEAR MR. SPECTER: This responds to your inquiry for Ms. Vicki Reid and the possibility of receiving the remaining portion of her late husband's, Captain Frederick Reid, Aviator Continuation Pay (ACP).

As currently codified in Section 301b, Title 37, United States Code, ACP is paid upon the acceptance of a written agreement to remain on active duty. Members who do not complete the total period of service under the terms of that agreement, even as a result of death while in military service, are not entitled to the unearned portion of the compensation. Current law does not permit the Air Force to pay Ms. Reid the approximately $58,000 remaining on her husband's agreement.

Air Force officials are aware of the possibility of extending the Mack Amendment to cover members killed in Operation Desert Shield and strongly support this initiative. The Air Force officials sincerely appreciate the dedication to duty exemplified by Captain Reid.

We trust you will find this information helpful.

Sincerely,

MARCIA ROSSI,
Lt. Col. USAF, Congressional Inquiry Division, Office of Legislative Liaison.

Mr. SPECTER. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

Mr. DORGAN. Mr. President, reserving the right to object—I will not object—I want to inquire, has that been cleared on this side?

Mr. SPECTER. It has been cleared on the other side of the aisle. It provides for aviator continuation pay for Air Force personnel killed in Operation Desert Shield. It is for a Pennsylvania constituent, as I understand it, the only one who has not been so compensated.

Mr. DORGAN. I thank the Senator.

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

The bill (S. 2584) was passed, as follows:

S. 2584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. OPERATION DESERT SHIELD AVIATOR CONTINUATION PAY.

Section 8135(b) of the Department of Defense Appropriations Act, 1992 (Public Law 102-172; 105 Stat. 1212; 37 U.S.C. 301b note) is amended—

(1) by striking out "January 17, 1991" and inserting in lieu thereof "August 2, 1990"; and

(2) by inserting "(regardless of the date of the commencement of combatant activities in such zone as specified in that Executive Order)" after "as a combat zone".

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1999—CONFERENCE REPORT

Mr. NICKLES. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of the conference report to accompany H.R. 3694, the intelligence authorization bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3694), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1998.)

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Mr. SHELBY. Mr. President, I rise today to ask that my colleagues support the Conference Report on the Intelligence Authorization Act for Fiscal Year 1999.

I want to thank Chairman YOUNG for his leadership in the Conference, and note for my colleagues that Chairman GOSS was unable to chair the conference due to a serious medical condition in his family. We all wish Mrs. Goss a speedy recovery.

I believe that the Conference Committee put together a solid package for consideration by the full Senate that fairly represents the intelligence priorities set forth in both the Senate and House versions of the Intelligence Authorization Act. I am pleased to report that the Conference Committee accomplished its task in a strong bipartisan manner, and I want to thank my colleague from Nebraska, Senator KERREY, for working so closely with me to produce this legislation.

I believe that the Conference Report embraces many of the key recommendations that the Senate adopted in its version of the bill.

We recommended significant increases in funding for high-priority projects aimed at better positioning the Intelligence Community for the threats of the 21st Century, while at the same time reducing funds for programs and activities that were not adequately justified or redundant.

The Conference Report includes key initiatives that I believe are vital for the future of our Intelligence Community.

These initiatives include: bolstering advanced research and development across the Community, to facilitate, among other things, the modernization of NSA and CIA; strengthening efforts in counter-proliferation, counter-terrorism, counter-narcotics, counter-intelligence, and effective covert action; expanding the collection and exploitation of measurements and signatures intelligence, especially ballistic missile intelligence; developing reconnaissance systems based on new small satellite technologies that provide flexible, affordable collection from space with radars to detect moving targets; boosting education, recruiting, and technical training for Intelligence Community personnel; enhancing analytical capabilities; streamlining dissemination of intelligence products; and providing new tools for information operations.

The conferees have provided the funds and guidance to ensure that military commanders and national policymakers continue to receive timely, accurate information on threats to our security.

At the same time, we have found some critical areas within the Community that are in need of major improvements.

First, the CIA's foremost mission of providing timely intelligence based on human sources ("HUMINT") is in grave jeopardy. CIA case officers today do not have the training or the equipment needed to keep their true identities hidden, to communicate covertly with agents, or to plant sophisticated listening devices and other collection tools that will provide timely intelligence on an adversary's intentions.

Second, what many see as the "crown jewel" of U.S. Intelligence—the National Security Agency's signals intelligence capability—likewise is in dire need of modernization. The digital and fiber optic revolutions are here-and-now, but NSA is still predominantly oriented toward cold war-era threats.

The Director of NSA has recommended major changes in how NSA performs its mission—changes we endorse—but those recommendations were not adequately addressed in the President's budget.

Third, promising technologies and systems for detecting missiles and other threats were short-changed in the President's budget request. Likewise, robust funding for new tools for conducting information warfare, new sensors to detect and counter proliferation, and a demonstration of radar technology on small and affordable satellites were not adequately addressed in the budget request.

And fourth, the declining quality of analysis within the Intelligence Community is cause for great concern.

Responding to the failure to predict the Indian nuclear tests, the Director of Central Intelligence commissioned retired Admiral David Jeremiah to review what went wrong and why. Among other findings, Admiral Jeremiah concluded that Intelligence Community analysts were complacent; they based their analyses on faulty assumptions; and engaged in wishful thinking. It is my belief that such is the state of analysis as it relates to many issues and problems, including political-military developments in China, the ballistic missile threat, and more. We can and should expect more from the Intelligence Community.

And as we demand more from our Intelligence Community in a number of areas, we also demand fiscal responsibility. The Conference Report includes a number of reductions to programs that were not adequately justified or were redundant with other elements within the Intelligence Community.

The Conference Report also places some fiscal restraints on programs that have historically been allowed to grow unbounded. These programs are primarily in the area of technical satellite collection, and the conferees placed a cost cap on the National Reconnaissance Office's next generation imagery satellite constellation, called the Future Imagery Architecture. I believe that this action is necessary to ensure that the program stays on a solid fiscal footing from the start, and focuses on the key performance parameters generated by the Intelligence Community and the Department of Defense's Joint Requirements Oversight Council.

Finally, the Conference Report includes a provision to name the CIA Headquarters Compound after President George Bush. I am happy that we were able to recognize President Bush's service to this country as both Director of Central Intelligence and as President. As DCI, Mr. Bush brought innovation to the CIA, and dramatically improved the morale within the Agency.

He demonstrated leadership and integrity at a time when both were desperately needed to help restore confidence in the CIA and the other elements that make up the Intelligence Community. It is a fitting tribute that we designate CIA headquarters the George Bush Center for Intelligence.

Mr. President, the Conference Committee worked closely together, in a strong bipartisan fashion, to produce a comprehensive Intelligence Authorization Act, and I urge my colleagues to support its adoption.

Mr. KERREY. Mr. President, I urge my colleagues to vote for this conference report and I urge the President to sign this bill into law. This legislation is an essential part of Congress' annual duty to provide and direct the resources which safeguard the independence of the United States and the lives and livelihoods of the American people. Chairman SHELBY'S leadership and sustained effort throughout this year come to fruition in this excellent bill and I congratulate him. I also appreciate the vision and hard work of Chairman GOSS and Ranking Member DICKS of the House Committee, together with the leadership of Chairman YOUNG at the conference.

This legislation, like the intelligence agencies it authorizes, seeks to maximize America's capabilities against today's threats while simultaneously building capability against the threats of 2010 and beyond. The Intelligence Community cannot be pulled back from its deployed status for retraining and retooling. It is operating tonight around the world, seeking to monitor every environment which could threaten America or our allies. But the Intelligence Community must also be able to master the steadily more complex technologies which will be tomorrow's threat environments. The outlines of the new century are apparent, as we see the continuing explosion of communications media, the global growth of strong encryption, and the increasing porosity of international borders, to mention just of the future that are already upon us. In response to challenges like these, the conference authorized the start or continuation of a number of new technology initiatives, including most of those the Senate supported previously.

The Committee's efforts to advance intelligence technology were greatly assisted by a group of outside experts who formed a Technical Advisory Group to the Committee. They helped the Committee focus on the future of signals intelligence and the necessity

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for the National Security Agency to modernize itself, as well as how technology could better support human intelligence. Their contribution of time and expertise is paying off already for the country, and they deserve the thanks of all of us.

Throughout the authorization process, the two intelligence committees have understood that their efforts to prepare U.S. intelligence to master the future must be bounded by budgetary realities. Most of the intelligence budget is dependent on a defense budget which, as we all know, is under severe pressure. The intelligence agencies have ambitious projects, and it is part of our job to set financial limits and time constraints and closely oversee the progress of these projects. The conferees placed a cost cap on the National Reconnaissance Office's Future Imagery Architecture for this reason.

The bill also encourages competitive analysis of important and difficult intelligence topics. The Jeremiah Report which reviewed intelligence community performance following this year's Indian nuclear test and the Rumsfeld panel report on the ballistic missile threat both stress the need to use competitive analysis drawing on experts from both within and outside the government. This bill encourages that process.

Analysis will grow stronger in the coming year, not only because of this legislation, but because there is now in place, under the Director of Central Intelligence, an Assistant Director for Analysis and Production. This official has not been confirmed by the Senate, although he may well be in the coming year, but he is already using the Director's authorities to make analysis in the Intelligence community more effective and efficient. He and his counterpart, the Assistant Director for Collection Management, and their supervisor, the Deputy Director for Community Management, are already by their actions validating Congress' wisdom in creating these positions. As I go to briefings and learn how these officials are marshaling resources in times of crisis, setting priorities, and identifying gaps, I am pleased with the work we did two years ago.

Another aspect of the intelligence business should be praised, Mr. President, and that is the unparalleled level of cooperation between the agencies these days. The relationship between FBI and the CIA is particularly strong and it has paid off most recently in the investigation of the attacks on our embassies in Kenya and Tanzania. Director Tenet and Director Freeh have overcome corporate cultures and bureaucratic impulses to forge a strong team for America and they deserve our thanks.

Team-building and sound oversight both depend on the flow of information. The Senate had gone on record three times in defense of a Federal employee's right to bring classified information on wrongdoing to the appropriate committees of Congress. The House had devised a process by which such information could come to Congress while insuring the employee's privacy, making the employee's agency aware the information was going to Congress, and insuring the protection of sources and methods. The conference modified the House provision and agreed to make the information process faster. As one who has argued several times on this floor for the right of Congress to be informed, I am pleased with the conference outcome on this provision and with the work of both bodies.

This legislation also recognizes the accomplishments of a great patriot, former President Bush, by naming the CIA Headquarters complex in his honor. From his initial service in World War II, President Bush has always stepped forward to do hard and sometimes dangerous work for his country. Leadership of the CIA has both characteristics. President Bush distinguished himself in that job, as in all his service, and I am pleased this legislation will honor him.

Mr. THURMOND. Mr. President, I rise to address an issue of serious consequence in the Intelligence Authorization Conference Report. Although I have signed the conference report and intend to support it on the Senate floor, I feel compelled to voice my concern over the manner in which the conference report deals with the Future Imagery Architecture, a program managed by the National Reconnaissance Office. I make these remarks with the complete understanding that conference is always difficult, and always improve compromises.

Although there are reasons to be concerned about cost growth in the FIA program, I am just as concerned that the intelligence conference report will have negative and unforeseen consequences for this important program. The conference report mandates fixed deployment dates, fixed costs, and fixed portions of the budget for subsidizing the commercial sector. Perhaps more troubling, the conference report fences one hundred percent of the FIA budget for fiscal year 1999 pending the completion of several significant tasks, a number of which are outside the purview of the NRO. Since FY 1999 has already commenced, this means that none of the FIA budget can be accessed for many months, even to support completion of the tasks that the conference report has mandated. In my view, imposing such limitations before a contract has even been awarded is an unprecedented and unwarranted degree of micro-management.

Based on my concerns, I have requested the views of the Department of Defense and the Joint Chiefs of Staff. The preliminary report that I have received indicates that OSD and JCS have serious concerns similar to mine.

It has been asserted that the FIA program must live under a congressionally imposed cost cap in order to prevent it from "eating" the entire National Foreign Intelligence Program. Some who make this argument, however, also want to see FIA's capabilities to support military users reduced so that savings can be used to support other programs within the NFIP that have a more "national" orientation. The fact of the matter is, however, even though FIA is funded in the NFIP, by its nature and the mission of the NRO, it must provide robust support to military forces. The Intelligence Committees must ensure that their bill supports these military missions as well as the other programs and missions funded within the NFIP.

INTELLIGENCE COMMUNITY WHISTLEBLOWER PROTECTION ACT OF 1998

Mr. SHELBY. Mr. President, I want to take a moment to discuss language that has been added to the Intelligence Authorization Act for Fiscal Year 1999. The language, establishing the "Intelligence Community Whistleblower Act of 1998," creates a process by which employees of intelligence agencies can provide information to Congress about certain potential problems without fear of reprisal or threats or reprisal.

Some of these provisions create duties for the Inspectors General (IGs) of the Department of Defense and the Department of Justice, and modify the Inspector General Act of 1978. As a result, they fall squarely within the jurisdiction of the Committee on Governmental Affairs, which is the Senate's primary oversight committee for the IG community.

However, Senator THOMPSON, the chairman of the Governmental Affairs Committee, worked with me to ensure that the language comports with the overall framework of the Inspector General Act. I thank my colleague for his participation in this issue.

Mr. THOMPSON. Mr. President, I thank my colleague from Alabama for his cooperation on this matter. The Committee on Governmental Affairs, which I chair, has long been a supporter and friend of the Inspector General (IG) community. Twenty years ago, the Committee's leadership led to passage of the Inspector General Act, legislation which has served Congress, the executive branch, and the public well. As their primary committee of jurisdiction, the Committee has a long-standing and abiding interest in the IGs.

Thus, the Committee has an interest in any legislation that affects the duties of the IGs. Portions of the "Intelligence Community Whistleblower Protection Act of 1998" amend the IG Act by vesting the Defense Department and Justice Department IGs with authority to act upon allegations received from intelligence community whistleblowers who wish to complain to Congress about problems they see in certain sensitive areas. Recognizing the Committee's jurisdiction and interest in this matter, Senator SHELBY solicited my views on how the whistleblower provisions fit within the existing IG statute. I thank Senator SHELBY for offering me

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the opportunity to work with him on this important issue.

S.C. SECRECY REFORM ACT

Mr. MOYNIHAN. Mr. President, today the Senate Select Committee on Intelligence brings to the floor the conference report on the Intelligence authorization bill. While I commend the Committee for bringing this legislation to the floor, I would like to take this opportunity to discuss a bill that the committee did not act on this year: the government Secrecy Reform Act (S. 712).

This legislation stems from the unanimous recommendation of the Commission on Protecting and Reducing Government Secrecy. Senator JESSE HELMS and I, and Representatives LARRY COMBEST and LEE HAMILTON (all Commissioners), introduced the Government Secrecy Act in May 1997. The bill sets out a new legislative framework to govern our secrecy system. Our core objective is to ensure that secrecy proceed according to law. The proposed statute can help ensure that the present regulatory regime will not simply continue to flourish without any restraint and without meaningful oversight and accountability.

A trenchant example of the need for reform in this area came last week by way of the Assassination Records Review Board. The Board has now completed its congressionally mandated review and release of documents related to President Kennedy's assassination. It has assembled at the National Archives a thorough collection of documents and evidence that was previously secret and scattered about the government. The Review Board found that while the public continues to search for answers over the past thirty-five years:

[T]he official record on the assassination of President Kennedy remained shrouded in secrecy and mystery.

The suspicions created by government secrecy eroded confidence in the truthfulness of federal agencies in general and damaged their credibility.

Credibility eroded needlessly, as most of the documents which the Board reviewed were declassified. And at considerable cost, as it represents the best-known and most notorious conspiracy theory now extant: the unwillingness on the part of the vast majority of the American public to accept that President Kennedy was assassinated in 1963 by Lee Harvey Oswald, acting alone.

Conspiracy theories have been with us since the birth of the Republic. This one seems to have only grown. A poll taken in 1966, two years after release of the Warren Commission report concluding that Oswald had acted alone, found that 36 percent of respondents accepted this finding, while 50 percent believed others had been involved in a *conspiracy* to kill the President. by 1978 only 18 percent responded that they believed the assassination had been the act of one man; fully 75 percent believed there had been a broader plot. The numbers have remained relatively steady since; a 1993 poll also found that three-quarters of those surveyed believed (consistent with the film JFK, released that year) that there had been a conspiracy.

It so happens that I was in the White House at the hour of the President's death (I was an assistant labor secretary at the time). I feared what would become of him if he were not protected, and I pleaded that we must get custody of Oswald. But no one seemed to be able to hear. Presently Oswald was killed, significantly complicating matters.

I did not think there had been a conspiracy to kill the president, but I was convinced that the American people would sooner or later come to believe that there had been one unless we investigated the event with exactly that presumption in mind. The Warren Commission report and the other subsequent investigations, with their nearly universal reliance on secrecy, did not dispel any such fantasies.

In conducting this document-by-document review of classified information, the Board reports that "the federal government needlessly and wastefully classified and then withheld from public access countless important records that did not require such treatment." How to explain this?

Beginning with the concept that secrecy should be understood as a form of government regulation. This was an insight of the Commission on Protecting and Reducing Government Secrecy, which I chaired, building on the work of the great German sociologist Max Weber, who wrote some eight decades ago:

The pure interest of the bureaucracy in power, however, is efficacious far beyond those areas where purely functional interests make for secrecy. The concept of the 'official secret' is the specific invention of bureaucracy, and nothing is so fantastically defended by the bureaucracy as this attitude, which cannot be substantially defended beyond these specifically qualified areas.

What we traditionally think of in this country as regulation concerns how citizens are to behave. Whereas public regulation involves what the citizen may do, secrecy concerns what that citizen may know. And the citizen does not know what may not be known. As our Commission stated: "Americans are familiar with the tendency to overregulate in other areas. What is different with secrecy is that the public cannot know the extent or the content of the regulation."

Thus, secrecy is the ultimate mode of regulation; the citizen does not even know that he or she is being regulated! It is a parallel regulatory regime with a far greater potential for damage if it malfunctions. In our democracy, where the free exchange of ideas is so essential, it can be suffocating.

And so the Commission recommended that legislation must be enacted. The Majority and Minority Leaders have been persuaded on the necessity of such legislation and are cosponsors of the bill. On March 3, 1998, we engaged in a colleague on the bill with the two Leaders, along with myself, Senators HELMS, THOMPSON, GLENN, SHELBY, and KERREY. At that time we all agreed on the importance of considering the bill in this session. The Majority Leader stated, "I hope that this process of committee consideration can be completed this spring and that we can expeditiously schedule floor time for legislation addressing this important issue. The Senate Governmental Affairs Committee, chaired by Senator THOMPSON, considered the bill and approved it unanimously on July 22. In its report to accompany the bill, the Committee had this important insight:

Our liberties depend on the balanced structure created by James Madison and the other framers of the Constitution. The national security information system has not had a clear legislative foundation, but . . . has been developed through a series of executive orders. It is time to bring this executive monopoly over the issue to an end, and to begin to engage in the same sort of dialogue between Congress and the executive that characterizes the development of government policy in all other means.

We are not proposing putting an end to government secrecy. Far from it. It is at times terribly necessary and used for the most legitimate reasons—ranging from military operations to diplomatic endeavors. Indeed, much of our Commission's report is devoted to explaining the varied circumstances in which secrecy is most essential. Yet, the bureaucratic attachment to secrecy has become so warped that, in the words of Kermit Hall, a member of the Assassination Records Review Board, it has transformed into "a deeply ingrained commitment to secrecy as a form of patriotism."

Secrecy need not remain the only norm—particularly when one considers that the current badly overextended system frequently fails to protect its most important secrets adequately. We must develop what might be termed a competing "culture of openness"—fully consistent with our interests in protecting national security, but in which power and authority are no longer derived primarily from one's ability to withhold information from others in government and the public at large.

Unfortunately, the Intelligence Committee did not take up this bill. Part of the delay was a result of the tardy administration response to the changes made by the Governmental Affairs Committee. A formal letter on the bill was not delivered until September 17. In addition, this letter sought the removal of the "balancing test" contained in the bill, a change that the administration had not previously sought.

Nevertheless, we were on the threshold of reaching agreement on the bill. The Intelligence Committee has been reviewing the bill informally, and I hope the Chairman will agree that the difference between us are not that great, and that we can pass the bill early in the 106th Congress.

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I ask unanimous consent that the letter expressing the administration views on the bill be printed in the RECORD at this point, along with comments on the letter made in a joint letter by the National Security Archives and the Federation of American Scientists, and a letter by Representative LEE HAMILTON.

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

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 2, 1998.

Mr. STEVEN AFTERGOOD,
Federation of American Scientists, 307 Massachusetts, Ave., NE., Washington, DC.

DEAR MR. AFTERGOOD, Thank you for your letter of September 24, 1998, concerning National Security Adviser Sandy Berger's letter to me with the Administration's views on S.712, The Government Secrecy Reform Act of 1998.

I agree with you. I think it is a serious mistake to accept the elimination of the public-interest balancing test as the price for Administration support of the bill. To agree with the Administration's proposed changes would amount to gutting the bill. It would amount to a codification of existing procedures in the Executive branch, and a rejection of the work of the Secrecy Commission. I want to work with the Administration in support of secrecy reform, but I cannot accept a revised bill that does not change the unacceptable status quo on classification and declassification.

As I read it, secrecy reform is dead in the current Congress. In the absence of Administration support, moving the bill forward just will not be possible.

On a personal note, I want to say that the efforts of you and your organization have been very helpful to me and to advocates of secrecy reform, and I wish you every success in the 106th Congress.

With best regards,

Sincerely,

LEE H. HAMILTON,
Ranking Democratic Member.

SEPTEMBER 24, 1998.

Re S. 712, the Government Secrecy Reform Act of 1998

Hon. DANIEL PATRICK MOYNIHAN,
United States Senate, Washington, DC.

DEAR SENATOR MOYNIHAN: As three public-interest organizations that have collectively spent more than 50 years battling excessive government secrecy imposed in the name of national security, we write to applaud S. 712, the Government Secrecy Reform Act of 1998, as a truly important and unprecedented step towards reforming the Cold War secrecy system.

The bill includes the critical ingredient for any real reform, namely the public-interest balancing test and judicial review under the Freedom of Information Act applying that test. The public-interest balancing test—whereby classification standards must incorporate a weighing of the public interest in knowing the information against the harm to the national security from disclosure—was one of the key recommendations of the Commission on Protecting and Reducing Government Secrecy in 1997. And the experience of the past 20 years confirms that Congress was correct in 1974, when it recognized that an essential element for an effective Freedom of Information Act is judicial review of whether classification standards are being properly applied when government agencies refuse to release information.

For these reasons, we are deeply disappointed that the Administration objects to the bill's inclusion of the public-interest balancing test for declassification and the concomitant amendment to the Freedom of Information Act. (Letter from Samuel R. Berger to Lee Hamilton, September 17, 1998; secs 2(c) and (f) in S. 712 as reported out of the Senate Committee on Governmental Affairs.) The Administration's demand to eliminate from the bill the balancing test and its enforcement under the FOIA threatens to eviscerate the bill and to gut any real reform. If the bill were to be passed without these provisions, we fear that secrecy reform would suffer a grievous setback. The historic opportunity carved out by the Commission to advance reform beyond the status quo will have been missed, and instead the Congress risks codifying a Cold War understanding of national security secrecy that ill serves democratic principles.

While we understand that the Administration's objections may make it difficult to pass the bill as reported out of Committee in this session of Congress, we urge you to insist on keeping these provisions in the bill.

We believe that the administration's objections can be overridden, if not in this Congress, then in the next one. The objections are based on a dangerous and erroneous view that the President has absolute and unreviewable authority over national security information. This view of exclusive authority challenges not only the judiciary's constitutional role in enforcing the law but also Congress' shared responsibility for national security information. It is inconsistent with the Supreme Court precedent, (See, *EPA v. Mink*, 410 U.S. 73 (1973) and contradicts decades of congressional legislating. (Most recently, the Nazi War Crimes Disclosure Act, but also the JFK Assassinations Records Collection Act, the Foreign Relations Authorization Act of 1992 (concerning the Department of State's Foreign Relations of the United States series), and the Intelligence Oversight Act, among others.) Indeed, this same argument was rejected by the Congress in 1974 when it overrode President Ford's veto of the amendment to the Freedom of Information Act providing that federal courts should determine whether information is properly classified. In now objection to judicial review, the administration is seeking to repeal the most important element of the FOIA.

Moreover, the oft-cited specter of "judicial intrusion on the President's constitutional authority" is not grounded in any real historical experience. The bill would authorize judicial review to determine whether mid-level agency officials have correctly applied declassification standards. In reality, no federal court is ever going to release national security information over the objection of the President or even the head of an agency, and certainly no appeals court would uphold any such decision. At the same time, experience confirms that it is only the availability of judicial review that ensures that agencies do, in fact, live up to their legal obligations under the FOIA. For example, only when the CIA was forced to defend its withholding of the aggregate intelligence budget in 1997 in court did the agency finally release the information.

As you have written, "[s]ecrecy can be a source of dangerous ignorance. . . . It is time. . . . to assert certain American fundamentals, foremost of which is the right to know what government is doing, and the corresponding ability to judge its performance." These key provisions of the bill are essential to allow the public to do just that—to participate effectively in the political process and to engage in democratic decision making on fundamental issues of foreign policy and national security.

Thank you for considering our views.

Sincerely yours,

KATE MARTIN,
Center for National Security Studies.
STEVEN AFTERGOOD,
Federation of American Scientists.
THOMAS BLANTON,
National Security Archive.

THE WHITE HOUSE,
Washington, September 17, 1998.

Hon. LEE HAMILTON,
Ranking Democratic Member,
Committee on International Relations,
House of Representatives,
Washington, DC.

DEAR LEE: Thank you for your letter inquiring about the Administration's views on S. 712, the Government Secrecy Reform Act of 1998, which was reported out of the Senate Committee on Governmental Affairs in July. I wrote to Chairman Thompson on May 11, 1998, conveying Administration views on this legislation; a copy of that letter is enclosed.

The amended version of S. 712 incorporates most of the Administration's recommendations regarding the Office of National Classification and Declassification Oversight (NCDO); the use of classification and declassification guidance; and the need to ensure that declassification decisions are made only by the originating agency. The Committee also clearly tried to address our concerns about new rights of judicial review, but further clarification on this vital point is necessary.

The additional improvements in S. 712 that we believe are essential are discussed below. Based on recent discussions with staff of Chairman Thompson, Senator Moynihan, and the Senate Select Committee on Intelligence, I am hopeful that needed changes can be made that would enable the Administration to endorse this legislation. For each of the key issues, our suggestions are included in a line-in/line-out version of S. 712 enclosed with this letter.

1. The bill must be modified to make it unambiguously clear that this legislation confers no new rights of judicial review. While the text of Section 6 attempts to limit judicial review, the interplay of other sections would create new substantive and procedural rights. Section 2(c), which requires a national security/public interest balancing test before classifying or declassifying any information, also sets forth specific standards for defining harm to national security and the public interest. Section 2(f), which amends the FOIA, clearly would make the application of a balancing test subject to judicial review under FOIA. Indeed, the Government Affairs Committee Report states that "the legislation necessarily imports into its new secrecy regime the judicial review available under the Freedom of Information Act (FOIA). For example, proper application of the public interest/national security balancing test would be within the scope of judicial review for Freedom of Information Act requests for classified information. * * *" Since the bill was reported, we have considered several approaches to revising the balancing test language or adding additional language to limit judicial review. None of these approaches completely addresses the concern that legislating a mandatory balancing test could encourage judicial intrusion on the President's constitutional authority and transform the nature of judicial review of classification and declassification decisions in FOIA litigation. We have concluded that the balancing test must be eliminated in order to protect essential Presidential authority and to ensure that the legislation introduces no new rights of judicial review.

2. Section 2(d) would forbid the classification of any information for more than 10

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years, without the concurrence of the head of the NCDO and a written certification to the President. Since over half of all original classification decisions made under E.O. 12958 are properly designated for more than 10 years (down from 95% under the previous Executive Order), implementation of this requirement would be unworkable without the employment of a huge new bureaucracy at the NCDO and hundreds of new certification writers at the agencies. The standards for duration of classification must be rewritten to make them compatible with the E.O. 12958 standards.

3. Section 4 establishes a Classification and Declassification Review Board, consisting exclusively of non-Government employees, to decide appeals from the public or agencies of decisions made by agencies or the NCDO. Agencies may appeal decisions of this Board only to the President. Given the new oversight authority assigned to the Director of the NCDO, and the existing rights of FOIA or Executive Order appeal, this new entity is redundant and unnecessary, and it is likely to be quite costly to operate. At a minimum, the legislation must be amended to permit the President to appoint Review Board members of his choosing, including current Government employees.

4. S. 712 locates the NCDO within the EOP, which is highly problematic given the traditional constraints on the budget and staffing levels of the EOP. Therefore, we believe the best organizational placement for the NCDO is the National Archives and Records Administration, which has a strong institutional commitment to declassifying public records as expeditiously as possible consistent with protecting national security interests. That said, we also would recommend the addition of language that would codify an ongoing NSC role in providing policy guidance to the NCDO and would enhance the prospects of adequate funding for the NCDO. With a continued NSC imprimatur and adequate assured funding, organizational placement outside the EOP would be a much less difficult issue.

5. Section 2(c)(4) requiring detailed written justifications for all classification decisions is the kind of administrative detail that should be left to the discretion of the executive branch. As drafted, this provision would increase paperwork and cost, without any assurance of improving classification decisions or the management of the program. However, we agree that it would make sense to require detailed justifications whenever classification decisions are incorporated into an agency's classification guide.

6. Section 3(d)(7) should be modified to limit NCDO access to the most sensitive records associated with a special access program. Limiting access to such records is consistent with E.O. 12958 but will not undermine the NCDO's ability to oversee special access programs.

I appreciate your continuing leadership on this matter. By working together on the difficult remaining issues, I think we have a chance to establish a statutory framework for the classification and declassification program that enhances the President's authority to manage the program effectively.

Sincerely,

SAMUEL R. BERGER,
Assistant to the President for National Security Affairs.

Mr. NICKLES. I ask unanimous consent that the conference report be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the conference report be printed in the RECORD.

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

The conference report was agreed to.

UNANIMOUS CONSENT AGREEMENT—CONFERENCE REPORT TO ACCOMPANY H.R. 1853

Mr. NICKLES. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may turn to the consideration of the conference report accompanying H.R. 1853, the Carl D. Perkins Vocational-Technical Education Act Amendments, and that the reading of the conference report be waived. I further ask unanimous consent that there be 30 minutes for debate equally divided between Senators JEFFORDS and KENNEDY, and that at the conclusion or yielding back of the time, the Senate proceed to vote on adoption of the conference report, without any intervening action or debate.

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

UNANIMOUS CONSENT AGREEMENT—H.R. 2431

Mr. NICKLES. Mr. President, I ask unanimous consent the Senate turn to H.R. 2431, that the cloture motion be vitiated, and that Senator LOTT or his designee be recognized to offer a substitute amendment; that there be 2½ hours of debate on the substitute amendment to be equally divided between the majority and minority leaders or their designees; and that following the expiration or yielding back of time, the substitute amendment be agreed to, that the motion to reconsider be laid upon the table, and that an amendment to the title then be offered and agreed to, the motion to reconsider be laid upon the table, the bill be advanced to third reading, and the Senate vote on final passage of H.R. 2431, as amended, without any intervening action or debate.

Mr. SPECTER. Mr. President, reserving the right to object, and I shall not object. When this unanimous consent agreement was propounded initially, the distinguished assistant majority leader and I talked about including 20 minutes for me to speak. Will the Senator modify his request so that I may be recognized as soon as the Senator from Minnesota finishes his comments?

Mr. NICKLES. Mr. President, I so modify the request.

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

Mr. NICKLES. Mr. President, we are ready to begin consideration on the International Religious Freedom Act.

FREEDOM FROM RELIGIOUS PERSECUTION ACT OF 1998

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 2431) to establish an Office of Religious Persecution Monitoring, to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3789

(Purpose: To express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted in foreign countries on account of religion; to authorize United States actions in response to violations of the right to religious freedom in foreign countries; to establish an Ambassador at Large for International Religious Freedom within the Department of State, a Commission on International Religious Freedom, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes)

Mr. NICKLES. I send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment numbered 3789.

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

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

(The text of the amendment (No. 3789) is printed in today's RECORD under "Amendments Submitted.")

Mr. NICKLES. Mr. President, I thank my colleagues for their participation and cooperation in making this act a reality, and particularly my colleague, Senator LIEBERMAN, for cosponsoring this. We have 29 cosponsors of this bill.

Certainly, one of the principal cosponsors and leaders on combating religious persecution and promoting religious freedom throughout the world has been Senator SPECTER, the original cosponsor of the Specter-Wolf bill which passed the House overwhelmingly. I commend Congressman WOLF for his leadership and for the enormous vote they had in the House. I commend Senator SPECTER for combating religious persecution and promoting religious freedom throughout the world.

I yield 20 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. At the outset, I congratulate my distinguished colleague from Oklahoma, Senator NICKLES, for his leadership on this important measure, along with Senator LIEBERMAN and Senator COATS.

This is a very important piece of legislation, which now appears to be near fruition, with joint action by the House of Representatives. This legislation, the International Religious Freedom Act, constitutes a very firm stand by the United States against religious persecution worldwide. A bipartisan group of Senators have spearheaded this effort, and the outcome is one in which the Senate can be proud.

The rockbed of America is religious freedom. That is the reason that the pilgrims came to this country, to the

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