

Here on the floor yesterday I talked about what they have tried to do to demonize and damage Senator TOM DASCHLE. He is the leader of the Democratic Senate. He has been the titular head of the Democratic Party, and there have been very personal attacks directed toward him, questioning his patriotism—a man who served in the U.S. military—attacking his family, attacking his religiosity—whether he is a proper member of his church. These are not proper responses.

Senator DASCHLE, as he did today, came to the floor and said he does not believe the White House is handling the nominations of statutory Democratic nominations; they are rejecting them, and they are rejecting them for no cause.

Why doesn't someone come and defend that, say we are rejecting all these 36 people because they are all bad people and not qualified? No, they are not willing to do that. They go after Senator DASCHLE. They did it to former Senator Max Cleland, one of the most courageous, inspirational, wonderful people I have ever met in my life.

Senator Cleland went to Vietnam, volunteered to go, a strapping man, 6 foot 4. You would never know it now because you never see him stand. He only has one leg. He has no arms. I am sorry. He has no legs, and he has one arm. For him to get dressed every morning is a 2-hour ordeal. A man with always a smile on his face, a man who, prior to his serious injury, was honored with the Silver Star in Vietnam for his gallantry. But that was not enough.

He was attacked personally for not being patriotic because he did not support the President's version of homeland security. With untold amounts of money, he was defeated in his reelection bid in Georgia.

He was the original cosponsor of the bill to create a Department of Homeland Security, long before President Bush supported such an idea. But this was not good enough. They attacked him, not his ideas.

When the President finally came around and agreed we needed a Department of Homeland Security, Mr. Cleland did not agree with him on all the details about how the employees should be classified. Fair enough. Debate the issues and discuss your differences. But this administration condoned campaign TV ads that compared Max Cleland, who lost three limbs, to Osama bin Laden and Saddam Hussein. Can you imagine that?

ZELL MILLER, my friend—I care a great deal about him—doesn't vote with us a lot on issues. He is a Democrat and has been his whole life. He doesn't vote with the Democrats as I think he should, but I respect his voting in a way that he believes is appropriate for his conscience. But ZELL MILLER, being the patriot he is and knowing the sacrifices Max Cleland has made for his country, said:

My friend Max deserves better than to be slandered like this.

Congratulations to ZELL MILLER. I have read his book, his second book. He has written one on the Marine Corps I have not read. I congratulate him. I have great respect for my friend ZELL MILLER. I appreciate very much his stepping out, doing his very best to protect and defend his friend Max Cleland. Every Member of the Senate agrees on this side of the aisle with what ZELL did.

Senator Cleland was not the only person. I talked about Senator DASCHLE. If you want to read an interesting book, read Paul O'Neill's "The Price of Loyalty." Paul O'Neill is one of America's great businessmen. He was chief executive officer of Alcoa Corporation.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator has used 15 minutes.

Mr. REID. I ask unanimous consent to speak for another 7½ minutes.

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

Mr. REID. No one would ever question his business acumen and his Republican Party credentials. He, as Secretary of the Treasury, didn't think the President conducted his office appropriately. He was asked to resign and left and wrote a book about his experiences in the White House as Secretary of the Treasury. Rather than trying to factually discount his book statements, they went after him. He questioned economic policies, foreign policy issues, and was denounced as a person who did not know what he was talking about or doing. It is a lot easier to attack a man personally than it is to defend the economic policies that have controlled our country. It is a lot easier to attack a man personally than it is to defend the economic policies that have contributed to the largest deficit in history, the worst record in jobs since Herbert Hoover. It is easier, but that doesn't mean it is right.

It wasn't right to leak the name of an undercover CIA agent because her husband said the President was mistaken about claiming Iraq had purchased uranium from Africa. Can you imagine that? An undercover CIA operative, someone who could be subject to be killed. Not only could that woman be subject to be harmed, but what about all the contacts she had. She was an undercover spy for America, and the White House, in an effort to disparage this man who disagreed with the administration on whether there was uranium that had come to Iraq from Africa, rather than questioning whether that was a fact, went after his wife.

It wasn't right to compare Senator Cleland to a murderer like Osama bin Laden, to attack Senator DASCHLE. These kinds of personal attacks are known as ad hominem arguments. That is Latin for "to the man." As a logical term, it means instead of refuting the point or argument being presented, you attack the person presenting it. In short, if you don't like the message, attack the messenger. Aristotle called ad

hominem arguments a fallacy of logic. They are the last recourse of those who can't debate an issue on its merits. The purpose of an ad hominem attack is to either convince your opponent to stop arguing or to convince the audience to stop listening. Sometimes it works, but it hasn't worked here. Nine out of every 10 Americans know of Richard Clarke's story. I don't think Richard Clarke is going to be intimidated.

I don't know him. To my knowledge, I have never spoken to him. I think the American people want an honest discussion of the questions this patriot is raising. This administration is attacking its critics. They are firing them, such as Larry Lindsey, or threatening to fire them, such as Mr. Foster, for telling the truth.

Larry Lindsey tried to tell the truth about how much the war was going to cost. He said it would cost \$100 billion. He got fired. But he was way short. Last year alone we appropriated over \$150 billion. General Shinseki, when he told the truth about how many troops we would need, got fired. It is a matter of record. Foster wanted last year to tell us how much Medicare would cost. He was told if he said a word, he would be fired, if he told the truth about the cost of Medicare.

This administration does not take questions well. It is too bad. In America we have a right to ask questions about what our Government is doing. Those questions deserve honest answers and debate, not threats and personal attacks.

I thank my colleagues. I am sorry they had to wait. I usually try not to speak very long. No one was here when I started. I certainly apologize for using more than my 10 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I ask unanimous consent to be allowed to speak for 15 minutes, and I may yield some time back.

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

#### MISSTATEMENTS ABOUT THE BUSH ADMINISTRATION

Mr. CORNYN. Mr. President, allow me to respond to some of the comments we have heard this morning, both from the minority leader and the minority whip. While it has been a rather broad attack on the administration on a number of different fronts, there are a couple of things I would like to direct my comments to by way of response.

I only wish that when we had differences of policy, we would confine our disagreements to policy and not make egregious errors of fact. While everybody has a right to their opinion, no one has a right to be wrong about the facts, or to misstate them in such a patently inaccurate way. My intention is to try to correct some of these misstatements that have been made by the minority leader, as well as the minority whip.

Really, they relate to two different areas. As I said, the attack has been rather broad and varied, but I have chosen to talk about the issue of nominations and the minority whip's comments with regard to Mr. Richard Clarke.

Let me first talk about Mr. Richard Clarke. I had the pleasure of meeting Mr. Clarke several years ago when I was attorney general of the State of Texas. We had him come down to the State and consult with us on the issue of cyber-terrorism, an area that most people in this country probably haven't thought a lot about but which is very important to our national security. Indeed, Mr. Clarke brought with him tremendous credentials in terms of his experience in counterterrorism working, as he did, during the Clinton administration, and then for a while under the administration of President George W. Bush.

Mr. President, I think it is blatantly unfair of Mr. Clarke, notwithstanding his credentials in counterterrorism, which I admire, to suggest that this President who was in office roughly 8 months before the attacks of September 11 was responsible for the 9/11 incident, when in fact the administration of President Bill Clinton, in which Mr. Clark worked, stood by and did not respond adequately to ever-escalating attacks against this country by Osama bin Laden and by al-Qaida.

It was in 1993 that Osama bin Laden directed al-Qaida's first successful attack on American soil, blowing up a car bomb in the basement garage of the World Trade Center, killing 6 and wounding 1,000. And then, in 1996, there was another attack against the United States Air Force's Khobar Towers barracks in Saudi Arabia, killing 19 Americans and wounding 515 Americans and Saudis. Then, in 1998, U.S. embassies in Kenya and Tanzania were attacked by al-Qaida suicide bombers who killed 234 people and wounded more than 5,000. And then, in 2000, al-Qaida attacked USS *Cole*, killing 17 American sailors and wounding 39.

Mr. President, I think it is only fair to ask where Mr. Clarke was during these ever-escalating attacks by al-Qaida and Osama bin Laden against Americans. The truth is, he was working in the Clinton White House in counterterrorism. I am confident he was doing everything he thought he could do. But if you have read some of his remarks, apparently he felt he was not getting a good response out of the President and others; indeed, he was prevented from briefing President Clinton on some of these attacks. The Director of the Central Intelligence Agency himself was not allowed to give daily briefings to President Clinton, as he currently does and as he has done since the beginning of the Bush administration.

So I would say Mr. Clarke's motives for making these reckless allegations against President Bush and the Bush administration just don't ring true. In-

deed, perhaps they are a diversion from his responsibility and the responsibility of the previous administration when it came to never adequately responding to Osama bin Laden and al-Qaida attacks until, of course, the terrible day of September 11.

Indeed, if you listen to some of President Bush's critics and the comments made by the minority whip and others on this very floor and in the press, you would say they are complaining that the President didn't do enough when it comes to fighting the war on terror. Of course, just a few short days ago, before Mr. Clarke's book came out, these same critics were saying the President had done too much, and that his policy and the Nation's policy of preemptive attack against our enemies—that is, not waiting until we are attacked and more Americans are killed, but going after the sleeper cells and the terrorists where they live before they can attack and thus protecting American citizens and American property in that way.

So really I don't see how they can have it both ways. By saying on one hand, if you believe Mr. Clarke, the administration didn't do enough, but then if you listen to other critics, just a few short days ago they were saying this President, this administration, did too much—you cannot have it both ways. I think the American people understand that. They also understand what is happening in the Senate and elsewhere, when this administration is attacked for leading the war on terror.

The truth is—and I think the American people recognize this—that no one has demonstrated greater leadership and greater commitment to protecting Americans and America's national interests on the war on terror than President George W. Bush—no one. The American people know that. It is just not right to try to suggest otherwise. It certainly contradicts those assertions and contradicts all of the facts I have only spoken about. If necessary, we can revisit this at a later time.

I also want to respond to some of the comments made by the minority leader about the nominations process and his claim that Democrats have extended an open hand of bipartisanship in an attempt to confirm nominees to various boards and commissions and to the Federal bench.

The truth is, again, Mr. President, we are all entitled to our opinions and our policy differences. Indeed, I think the American people expect us to fight on this floor, rhetorically speaking, for those positions we believe in and which we believe are in the best interest of the American people. What they should also expect is that we would not come here and make such inaccurate statements of fact about this supposed bipartisanship when it comes to our Democratic colleagues on the nominations issue.

I have the honor of serving on the Senate Judiciary Committee, where we have seen unprecedented obstruction of

President Bush's judicial nominees. Indeed, never before in the history of the United States of America have a handful of Democrats—handful of any party—been able to successfully block a bipartisan majority from confirming President Bush's highly qualified judicial nominees.

I heard the minority leader talk about a highly qualified Hispanic nominee who he believes should be confirmed to a position. I was reminded of the terrible treatment that Miguel Estrada received at the hands of this same leadership on the Democratic side.

This immigrant from Honduras came to the United States when he was 17 years old. He could barely speak English. He taught himself the English language, went on to graduate from two of America's most prestigious institutions of higher learning, and went on to rise to the top of the legal profession. He represented the U.S. Government in 15 arguments before the United States Supreme Court. Arguing a case before the United States Supreme Court is the Super Bowl when it comes to the legal profession.

Notwithstanding the fact that Miguel Estrada was a highly qualified, very successful appellate lawyer, someone enormously qualified to serve on the District of Columbia Court of Appeals, he was denied the courtesy of an up-or-down vote. No one suggests that any Senator who thinks they should vote against a nominee should not do so.

Certainly, we should all vote our own conscience, and we will be held accountable by the voters at the next election, but what has happened is a bipartisan majority was simply obstructed by the gamesmanship and the unprecedented way in which this President's judicial nominees have been treated, such as Miguel Estrada, who represents the manifestation of the American dream.

Miguel Estrada's dream came to a crashing halt when he hit the glass ceiling imposed by the Democratic minority in the Senate. There is no nice way to put it. It is ugly, it is partisan, and it is unworthy of the Members of this body and those of us who are sworn to protect the public interest rather than special interests.

While sitting in my office listening, I was also astonished to hear the minority leader talk about the President's use of recess appointments when it comes to Charles Pickering, whom he appointed to serve on the Fifth Circuit Court of Appeals, and Bill Pryor, who was appointed during a recess by the President to the Eleventh Circuit Court of Appeals. What they did not tell the American people is, the only reason the President had to use the power that is very clearly conferred upon him in the U.S. Constitution is because of this unprecedented obstruction by the Democratic minority in the Senate, which denied these two highly qualified nominees, Charles Pickering,

now Judge Pickering of the Fifth Circuit Court of Appeals, and Judge Bill Pryor, an up-or-down vote.

The only reason they resorted again to this unprecedented obstruction, denying them even the courtesy of an up-or-down vote, is because they knew if allowed to vote, a bipartisan majority of the Senate would confirm those appointments.

Here again, we are entitled to have policy differences and, indeed, we will, but the suggestion that somehow President Bush used these recess appointments in some sort of unauthorized or inappropriate way is false. The fact is, during the course of this country's history, recess appointment power has been used more than 300 times. To suggest that President Bush has somehow gone outside the power conferred upon him under the U.S. Constitution is not true.

Sometimes I am amazed that people can say things with a straight face. I expect them to wink or otherwise indicate they know they are trying to pull a fast one, but the fact is the suggestion, the inference that those speakers would ask the American people to draw from their comments are just not true.

President Clinton used recess appointments. Frequently, former Presidents used recess appointments of one kind or another when they were not able to get their nominees confirmed on the timetable they wanted for whatever reason, but that is a power clearly conferred upon the President under the U.S. Constitution.

Can I ask how much time I have remaining?

The PRESIDING OFFICER. The Senator has used his 15 minutes.

Mr. CORNYN. I ask unanimous consent for 3 additional minutes.

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

Mr. CORNYN. Thank you. I thank my colleague from Minnesota for his courtesy.

Finally, I will say that serving on the Judiciary Committee has been a startling experience for this Senator, a new member of the Senate coming, as I did, to this body expecting that all Senators would want to try to work through our differences in a way that reaches consensus and in a way that allows us to do our job.

Unfortunately, the Judiciary Committee has spiraled down into partisan dysfunction in a way that is, frankly, not very pleasant, and it is not doing the best job we can and should be doing for the American people.

The truth is, what we see happening is a handful of special interest groups that seem to be calling the tune, and Senators, unfortunately, responding to that and blocking President Bush's nominees. We saw during the revelation of a number of memos that came to light that, indeed, some of these interest groups were trying to manipulate the outcome in lawsuits that were pending on the court of appeals.

One very sensitive case affecting our entire Nation was an affirmative ac-

tion case. That case involved the University of Michigan's affirmative action policies. The memos reveal that nominees were being blocked and slowpeddled in an effort to have an impact on that litigation. It is not right.

Now I know my colleagues, all of us on the Judiciary Committee, have decried the way in which some of these memos came to light. The truth is, an overzealous, misguided staffer accessed computer files of both Republican and Democrat members of the Senate Judiciary Committee and released those publicly. We have had the Sergeant at Arms conduct an investigation. Indeed, a number of us have asked the appropriate prosecutor to investigate it to see if criminal charges should be brought concerning the way in which these memos came to light. But just as the Pentagon Papers, years ago, were accessed unlawfully, they demonstrate a very real public policy concern that I do not think we can ignore.

There are two things that have happened. One is the taking of the memos, and the other is the inappropriateness of the conduct revealed.

As I close my remarks, I again thank my colleague from Minnesota for his courtesy by allowing me to speak first.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

#### THE REPUBLICAN ADMINISTRATION

Mr. DAYTON. Mr. President, I ask unanimous consent that I be allowed 20 minutes to make my remarks. I do not believe I will need all that time, but I would ask to have that available.

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

Mr. DAYTON. Mr. President, I say to my good friend from Texas, with whom I shared a very instructive tour of Iraq last July—we sweltered together in 115 degrees—I have the greatest regard for him in working with him on these various matters. I do respectfully say in response to his comment about the 9/11 questions that have been raised, and supposedly my colleagues wanting to have things both ways, his words, I cannot for the life of me figure out how he and others on that side of the aisle could suggest that President Clinton is to blame for something that occurred over 8½ months after he left office, but President Bush is not to blame for something that happened 8½ months after he took office and is not blamed for anything related to it since. I don't understand how that is anything other than trying to have it both ways and also not making much sense at all.

I think both of us would be well served to let the Commission make its determinations and recognize that our most important task is to make sure it never happens again. We share that desire here, for all 100 of us are Americans first and partisans second or third or somewhere else. Let's hope the truth all comes forth so that, most impor-

tantly, we can understand what we need to do to make sure this country is safe every day and night for the rest of my lifetime and yours and all the rest of our children to follow.

I want to shift to another subject. Yesterday's Washington Post had an article about the famous magician, Henry Houdini, and the dispute whether or not his magic tricks should be disclosed to the public. It made me think, as I was looking back on the events that occurred in the Senate this last week, that we have our own magic tricks. One of them is this disappearing legislation trick. Unfortunately, it is one of too many, too clever sleight of hand tricks that are employed in this body. I think, in fact, we need more of a return to reality if we are going to serve the vital interests of the people I represent in Minnesota, and others around the country.

At the start of the week, for those who may not have been following this moment by moment, we were considering a bill that was entitled a JOBS Act. If ever there was a situation facing America and the over 8 million Americans who do not have jobs right now that needs a serious dose of reality, that is at the top of the list. Senator TOM HARKIN, my colleague from Iowa, was offering an amendment that would either have this body choose to support or oppose the Department of Labor's taking overtime pay, the 1½ times an hourly pay required for those working overtime. In this case, this group would be over 8 million Americans workers—police officers, other law enforcement officials, firefighters, teachers, middle-class working Americans. These are hard-working Americans working overtime to earn extra money to improve their lives or just to try to make ends meet; to raise their families, send their kids to college, or just get them through junior high school; take care of an aging or sick parent, help pay for the prescription drugs for those elderly parents or nursing homes for them, which costs about the same these days.

We had an agreement reached before the bill came to the floor between the Republican and Democratic leaders that there would be a vote on the Harkin amendment. That was the promise that was made to all of us. But suddenly here was this Senate's disappearing act, this sleight-of-hand trick that even the famous Harry Houdini could not have matched. That bill just disappeared from the Senate floor and was replaced by another bill which was voted upon and passed last night.

Monday, now, we are told we will be taking up another bill but not the JOBS Act. Where did it go? When will it come back? Will it come back at all? Actually, that pretty well describes the Republican job record under President Bush. Millions of jobs disappear. No one knows when they are coming back. No one knows if they are coming back. Secretary of Treasury John Snow, testifying before a congressional committee just 2 weeks ago, said the lack