

HOMELAND SECURITY ACT OF 2002—Resumed

The PRESIDING OFFICER. The clerk will report the pending business. The bill clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Thompson (for Gramm) amendment No. 4901, in the nature of a substitute.

Lieberman/McCain amendment No. 4902 (to amendment No. 4901), to establish within the legislative branch the National Commission on Terrorist Attacks Upon the United States.

Mr. LIEBERMAN. Mr. President, I will speak on the substitute on homeland security introduced yesterday by Senator THOMPSON on behalf of Senators GRAMM and MILLER. My feelings about this substitute, to put it as directly as I can, are mixed. The substitute would create a single strong Department of Homeland Security under the leadership of an accountable Secretary, which many Members have supported, actually, for more than a year now in response to the terrorist attacks of September 11, 2001, and the dangerous vulnerabilities in our federal homeland security system that those attacks revealed.

The substitute is also problematic in many ways. I categorize them in four chunks.

First, this substitute contains several provisions that are just ill-conceived, missed opportunities to close vulnerabilities in our security or that otherwise make the wrong choice.

Second, the bill contains provisions that are unrelated to homeland security legislation. Apparently, as often happens in Congress, some of our colleagues have decided to put the provisions on what they assumed was the last bus out of town during this session rather than waiting for the right ride.

Third, the bill contains provisions that do seem, as we approach December, to be gift wrapped by lobbyists to satisfy some special interests, not carefully considered to improve the security of the American people.

Fourth, a number of provisions in the bill are 11th hour additions, new to everyone in the Senate, not previously included either in the legislation that came from our Governmental Affairs Committee or in the so-called Graham-Miller substitute, at least in its previous iterations. This makes it difficult to know whether these provisions are good or bad. It is in that sense that these last-minute conditions on a critically important bill are not up to the standards the Senate should follow, and are not of the urgent necessity that cries out for this bill, which is to protect the homeland security of the American people.

There are many good things to say about the substitute in a number of areas. The bill has made real progress from earlier proposals, both from the President and from our Republican colleagues. I am grateful, once again, as

in the previous Gramm-Miller substitute, the overall architecture and composition of the proposed Department of Homeland Security is quite similar to what we conceived in the legislation approved by the Governmental Affairs Committee, first on a partisan vote in May and then unfortunately in a bipartisan vote in July of this year.

This bill, the substitute, would create a new Department with major provisions responsible for border and transportation security, intelligence, and critical infrastructure protection, emergency preparedness and response, science and technology, and immigration services.

This bill is nearly identical to the bill approved by the Governmental Affairs Committee in deciding which domestic defense-related agencies and offices should be transferred and how they should be organized. In fact, when we say, as has been said so often in this debate in this Chamber, that there is agreement on 90 to 95 percent of what we should be doing here with regard to homeland security, that is what we mean. We mean we agree on the big picture, if I may put it that way. That is a big deal.

We recognize that today's terrible vulnerabilities are there and we agree not only on the need for a comprehensive reorganization to close those vulnerabilities but almost all of the components that have reorganization.

Today, homeland security is institutionally homeless—everyone is in charge and therefore no one is in charge. Under this substitute, as under our committee-approved legislation, that will no longer be the case. Under this bill, as under our bill, for the first time we would bolster emergency preparedness and response efforts to ensure that all areas and levels of government are working together to anticipate and prepare for the worst. Today, the fact is that coordination of our homeland security agencies is the exception, not the rule. That is unacceptable.

Under this bill, as under our bill, for the first time we will have a single focal point for all of the intelligence available to our Government so it can be properly fused and analyzed, and so that we will enhance our ability to deter, prevent, and respond to terrorist attacks.

This was clearly one of the most glaring weaknesses of our Government leading up to September 11, 2001, as the excellent work done by the Joint Intelligence Committee investigations has made clear.

Under this bill, again as under our committee bill, for the first time we would build strong bonds between Federal, State, and local governments to target terrorism. State and local officials are on the front lines of the fight against terrorism, as we learned so clearly and painfully in the death tolls of the September 11 heroes. Today, local communities are waiting for bet-

ter training, for new tools, and for coordinated prevention and protection strategy. And this proposal, as under our committee bill, would accomplish that.

Under this bill also, as under our committee bill, for the first time we would bring key border and national entry agencies together to ensure that dangerous people and dangerous goods are kept out of our country without restricting the flow of legal immigration and commerce that clearly nourishes our Nation. Today, threats to America may be slipping through the cracks because of our disorganization, and that is indefensible.

Under this bill, as under our bill, for the first time we would promote significant new research and technology development opportunities and homeland defense. The war against terrorism has no traditional battlefield. One of the untraditional battlefields where we must fight to emerge victorious is the laboratory. Today these efforts are dispersed and often blurred. That is unwise. We cannot tolerate this any longer.

Under this bill, as under our bill, for the first time we would facilitate close and comprehensive coordination between the public and private sectors to protect critical infrastructure. Fully 85 percent of our critical infrastructure is owned and operated by the private sector. We are talking here about electric grids, transportation, food distribution systems, cyber-systems, and the like. We have to close vulnerabilities in those systems before terrorists strike them. To do so, we have to be working with the private sector.

In all of these areas, this piece of legislation, the substitute, will usher in, I am confident, a much more secure nation. Beyond its overall structure, I am also pleased the substitute has moved toward our committee-approved bill in a number of specific areas, namely intelligence, science, and technology, workforce improvement, and appropriations. I want to discuss these each briefly now.

First, intelligence. The President's initial proposal had a very limited conception of the intelligence powers and responsibilities of the new Department. The intelligence provisions in this bill borrowed heavily from our legislation, and as a result will give our Government a much better opportunity to avoid repeating the disastrous disconnects that prevented us from connecting those dots before September 11.

First, the bill would, like our committee legislation, make it clear that the purpose of the new Department's information analysis function includes fusing, analyzing, and disseminating intelligence to deter, prevent, preempt or respond to all terrorist threats against the United States. That is a central change from the President's initial, more limited conception of an intelligence division designed primarily to protect our critical infrastructure. We argued that was inadequate because—well, the World Trade

Center itself, and the Pentagon, are not parts of our traditional critical infrastructure, nor are shopping malls and places of public gathering which terrorists unfortunately strike.

This substitute also made progress in priority setting. It gives the Under Secretary the authority to work with the Director of Central Intelligence and other agencies to establish intelligence collection priorities and insures that the Department of Homeland Security will be at the table with the rest of the intelligence community when intelligence requirements and priorities are established.

Finally on this point, the bill does seem to have moved closer to the committee bill on the crucial issue of access to information by giving the new Department access to information except in cases where the President objects.

However, some differences do remain on intelligence. Rather than creating separate Senate-confirmed Under Secretary positions to oversee intelligence analysis and infrastructure protection, the substitute creates Assistant Secretaries within the same division of the new Department. In my view, intelligence and infrastructure protection should each be led by a separate Senate-confirmed Under Secretary, each of whom can bring the necessary clout, attention, resources, and attention to those complex and different challenges. The access to information provisions—Senator SPECTER and I agree, and he may also have an amendment on them—also could be enhanced.

On the whole, however, this critical function of the Department, intelligence, has been greatly improved in this substitute. The Department created by this bill will systematically organize, scrutinize, and bring together all relevant data in order to much better protect the American people from terrorism.

Science and technology next. So, too, has this substitute moved toward our legislation on science and technology. Our committee worked very hard to give this new Department the creative abilities it needs to develop and deploy a full range of technologies to detect and defeat danger on our home soil.

In World War II, of course, we had the Manhattan Project, scientists who came together to design revolutionary weaponry which was ultimately decisive in that war.

In the war against terrorism here at home, we need revolutionary defense technologies, machines that can scan for dangerous materials—biometric identification systems, information analysis software, vaccines and antidotes to deadly pathogens—poisons. The list goes on and on, most of it probably at this moment unimaginable in detail but critically important to our future security.

I am very gratified to see the substitute before us provides for a Directorate of Science and Technology headed by a Senate-confirmed Under Sec-

retary, a Homeland Security Advanced Research Projects Agency that is modeled after DARPA in the Department of Defense, federally funded research and development centers to provide analytical support to the Department, and a mechanism for allowing the Department to access any of the Department of Energy laboratories and sites.

All of these were not included in the President's original homeland security proposal. I am grateful to the authors of the substitute for including them now.

There are some other points of progress in the bill I think are worth noting.

First, thanks I gather in large measure to the effective advocacy by the senior Senator from Alaska, Senator STEVENS, and unlike the President's original proposal, this substitute has wisely preserved congressional accountability over spending by the new Department—after all, that is our constitutional role—and in doing so has rejected the administration's call for expansive authority to shift money among accounts—appropriated money, the public's money—without approval by Congress.

Second, this bill has made significant strides in safeguarding the Department's integrity, cost-effectiveness, and respect for individual rights.

The original Gramm-Miller substitute, offered on behalf of the administration, would have created a department without a civil rights officer or privacy officer, and with an inspector general over whom the Department's Secretary would have had unprecedented authority, thereby making it possible that the inspector general's independence would have been compromised.

In this new substitute now pending, there is once again a civil rights officer in the Department, there is a privacy officer, and the Secretary's authority over the inspector general has been substantially checked.

I wish the improvements had gone further. Our committee-endorsed bill, for instance, would have given the civil rights officer and the inspector general more authority than the substitute does and, therefore, help assure a new Department of Homeland Security that would more likely adhere to the highest standards of values and conduct. But I am grateful for what has changed in this substitute.

Finally, I am pleased that the substitute amendment has incorporated the entire Federal workforce improvement bipartisan proposal developed by Senators AKAKA and VOINOVICH, both distinguished members of our Governmental Affairs Committee. That reform package will help this Department and all other Federal Departments attract, retain, and reward the best talent with the help of new personnel management tools and management flexibility given to the new Secretary.

Mr. President, unfortunately, as I said at the beginning, there is some

bad news. That was the good news in the substitute. There is some bad news as well.

While this bill, as I have just indicated, does incorporate, particularly in the Akaka-Voinovich agreement, some substantial human capital reforms for the Federal workforce, it unfortunately also takes a step backward in other related areas. On the personnel issues—the Federal workforce issues that became such an unfortunate wedge between us here in this Chamber for so long—I must say I am not happy with the outcome. I don't want to rehash the arguments for and against keeping civil service protections in place and giving union representative employees basic protection against having their rights arbitrarily terminated. But let me just say this. What motivated us all along was a desire to ensure this new Department would from day one have not only the best leadership, the most sensible organization, and the resources necessary to do the big job we are giving it, but that it would also have the highest quality and best motivated workforce it could possibly have; that we would not begin the history of this new Department with expressions of suspicion about the commitment—even perhaps the patriotism—of these Federal employees, but that we would engage them together as part of a team, as respected members of the team, and indeed as those members of the team who would be doing the critical work every hour of every day to protect the security of the American people at home.

We often in our debate referred to the events of September 11 and the fact that those firefighters and police officers who we honored for their heroism, who we mourned for the ultimate sacrifice that they gave, were all members of unions, were all governed by civil service rules. But in the hour of crisis, in the hour of public need, not a single one of them but for a second thought about their union rights, or their collective bargaining agreement, or their civil service agreement. They rushed to the duty that they had, and accepted it as public employees.

At one point a few months ago, a group of us met with a battalion chief from the New York City Fire Department. He told us that on that day, September 11, he was off duty with a group of friends who were off duty. When they heard the planes had hit the World Trade Center, they just rushed to the scene. He talked about terrible frustration and heartbreak because some of his colleagues, when they got to the scene, were told they could not go into the building to try to rescue those who were there. That is what public service is about. Civil service protections and collective bargaining rights never come between public employees and their obligation or responsibility to do duty. It was shown over and over again by the Federal employees in the departments and agencies that will be consolidated into this new Department.

On this front, this substitute continues to be a disappointment to me. The bill fails to correct major problems in the previous Gramm-Miller substitute, and, as a result, I fear, invites politicization, arbitrary treatment, and other personnel abuses in the Federal Government in a way that may damage the merit-based workplace Federal employees and the American people—we the American people—who these Federal employees serve and in this new Department must protect have come to depend upon.

I hope, of course, that what many fear does not occur and that if, or probably when, this substitute passes, this and future administrations will not overstep their bounds, will not unfairly use the unprecedented authority they are given in parts of this legislation, and will not undermine thereby the effectiveness of the new Department.

I must say I still personally fail to understand why any President would need to remove collective bargaining rights from unionized employees who have a long and proud history of helping to protect the homeland, as the 45,000-some employees who will be unionized of the 170,000, who will be moved to this Department, and who will continue to do exactly the same work they have done for decades.

While previous Presidents have had the same authority and have not exercised it to remove their collective bargaining rights, they will continue to do that work in this new Department. If and when this President or any future Presidents should decide to eliminate collective bargaining within a unit of the Department—as they will have the legal power to do if this substitute passes unilaterally—I am confident the Congress will not just sit back and watch.

We will expect the President to take such a step only if it is truly essential to national security and not merely a management convenience or an ideological compulsion. We will expect the Department's leadership will have first made good-faith efforts to work cooperatively with their employees who are union members, determining that union representation is in fact incompatible with national security. We will expect the explanation the President provides to Congress, required under this substitute, to be thorough. The administration for its part has said, particularly in recent days, it is not out to break Federal employee unions, but only to retain an extraordinary authority that has been exercised only a handful of times over the last four decades. We in Congress and our successors and I believe the American people will hold both this President and his successors to that promise.

When it comes to the creation of a modified personnel management system, we expect the employees in the new Department will be hired, promoted, disciplined, and fired based only on merit. We expect that if and when existing civil service rights and protec-

tions are altered or removed, the administration can demonstrate a clear need for doing so in the context of the homeland security mission of the Department. We expect fair and independent procedures will be maintained for all employees with grievances, especially those who allege abuse or corruption within the Department—whistleblowers. We expect changes to the system will be carefully crafted through negotiation and collaboration with employees and their representatives at all levels, from the rank and file to top echelons of management. And if a disagreement arises, or an agreement is not possible to obtain, the required 30 days of mediation and negotiation between the administration and the unions will be substantial and in good faith, not cosmetic.

The administration has pledged not to undermine the integrity of a merit-based public-sector workplace. Here again, the American people and we in Congress will be watching, and watching carefully.

Let me discuss a few other concerns that I have about the substitute. On immigration, this bill takes what, in my view, is a step backward from our committee-approved legislation by splitting the Immigration and Naturalization Service programs between the Border Directorate, where all immigration enforcement will be housed, and a new Bureau for Citizenship and Immigration Services, which will handle immigration services.

I am concerned that this configuration may diffuse responsibility for immigration policy and coordination among a large number of officials. And it is contrary to the earlier bipartisan Kennedy-Brownback immigration legislation.

I am also troubled that the bill weakens provisions we had carefully developed to ensure that the independence of immigration courts would be preserved and that vulnerable child aliens would not be lost in the shuffle to the new Department.

I regret that the bill would shield private-sector information that is voluntarily submitted to the new Department from the Freedom of Information Act from being used in civil litigation and even from release by State and local governments under their own sunshine laws. That is a major retreat from the carefully crafted bipartisan Bennett-Levin-Leahy compromise that was included in our committee bill and in the Gramm-Miller substitute in its original form, and is of particular concern to community groups, workers, environmental advocates, and watchdogs who depend on access to this information to help them reduce environmental health and safety risks to themselves, their families, and the public.

In addition, out of the blue, if I may phrase it that way, this substitute includes a provision that had not been seen in any previous proposals regarding homeland security, and that would

take complaints about vaccine additives out of the courts and require them to be made through the Federal Vaccine Injury Compensation Program.

That would affect potential claims involving the mercury-based preservative thimerosal. Because there are a number of class action lawsuits pending on this issue, this is a highly controversial and complicated issue, one that the relevant committee of the Senate, which has been working on it, the HELP Committee, has not been able to come to a consensus on after several months of deliberation.

So why is this provision being rushed through now in the context of homeland security legislation in a way that makes it very hard for us to reach a proper conclusion, though we have very significant fears that rights of injured parties are being severely limited?

The bill also omits a vital provision in our bill that would have provided \$1 billion for each of the fiscal years 2003 and 2004 to local governments to hire firefighters. This provision, sponsored in our committee, and cosponsored—again, bipartisan—by Senators Carnahan and Collins, would create what is effectively a firefighter's version of the immensely successful and productive and valued COPS Program that we created in the 1990s. I believe it started in 1994 for police officers locally.

After September 11, the firefighters are people we depend on, particularly in an emergency. The fire departments have taken on new responsibilities throughout the country post September 11 and are doing more hiring, so we need to help them pay for their new personnel. We need to help them train and equip those personnel. Unfortunately, that pathbreaking, productive, progressive provision has been taken out of the substitute.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. LIEBERMAN. I will yield for a question from the Senator from West Virginia.

Mr. BYRD. My question is this: The distinguished Senator is pointing out some very glaring differences between the bill—I call it a bill. Is this the hydra-headed monster that has come over from the House in the last 24 hours or so? And is this the item before the Senate today? And is this the vehicle to which the distinguished Senator from Connecticut is addressing his remarks? That would be my first question.

Mr. LIEBERMAN. Through the Chair, I thank the Senator from West Virginia.

The House, last night, adopted a proposal which I gather is essentially the same, perhaps totally the same, as this substitute which was offered yesterday by Senators THOMPSON, GRAMM, and MILLER.

Mr. BYRD. So what we have before the Senate—Mr. President, will the Senator yield further?

Mr. LIEBERMAN. I will.

Mr. BYRD. What we have before the Senate is a massive piece of legislation with 480-odd pages, that has been virtually dropped into our laps within the last 36 hours, allowing for yesterday and thus far today. This is a virtually new bill, as I see it; is it not? It is something that was—I read about it in the newspapers—something to the effect this is a compromise that was passed by the House and sent to the Senate. It is now under discussion in the Senate.

The distinguished Senator from Connecticut is performing, as I see it, a great service in addressing his remarks to this monstrosity. That is my word for it. It is a monstrosity. It is almost 500 pages, and it is just suddenly dropped into our laps. This is not the bill which came out of the committee chaired by the Senator from Connecticut, is it?

Mr. LIEBERMAN. I thank the Senator. As I said at the outset of the remarks I am giving here, there is a lot that is in this substitute that has, in fact, been taken from our committee bill. But as I am enumerating now, there is a lot also that has been added, and some of it really at the last moment.

Some of it is compromise legislation, for instance, on the question of Federal worker rights, which we have been debating here for several weeks now. But some of it, such as the provision on child vaccine and the liability of pharmaceutical companies in cases of injury from that vaccine, we have never seen in any of the many forms of homeland security legislation that have been introduced or discussed, and not only in the Senate but I believe in the House as well.

Mr. BYRD. Mr. President, will the distinguished Senator yield for a further question?

Mr. LIEBERMAN. I will.

Mr. BYRD. Mr. President, in speaking of the vaccines, as you know, in this town, and in this Chamber, there is often a great deal said about pork, about pork, and particularly with reference to appropriations bills.

This seems, to me, to be some pork—some pork—in this bill for the pharmaceutical companies.

That is what it sounds like. I believe the distinguished Senator from Illinois will later have something to say about this, possibly have an amendment in regard to it. That was kind of what I understood from a conversation earlier today. It sounds to me as if this is something brand new to the distinguished Senator from Connecticut.

What I am leading up to is this question: Here we have a bill we are being asked to pass virtually sight unseen. We have had yesterday and thus far today to study this new vehicle that has come to us from the House, passed by the House, I believe. And this vehicle itself did not come before the committee that is so ably chaired by the distinguished Senator from Connecticut. This is a new piece of legisla-

tion, virtually sight unseen in many ways. There are many parts of it, of course, that, as the distinguished Senator from Connecticut has indicated, were probably lifted out of the measure which he and the other members of his committee, both Republicans and Democrats, reported from that committee some several months ago, that bill we referred to back in those days as the Lieberman substitute.

Mr. LIEBERMAN. I remember those days fondly.

Mr. BYRD. Yes, I remember them fondly also.

Mr. LIEBERMAN. I thank the Senator.

Mr. BYRD. But I am very disturbed by the fact that here we have before the Senate a measure which is in many ways a measure that has not been seen, studied, except for the few hours of yesterday and today we and our staffs have been able to allot to it. This is something new, and we are going to be asked to vote on cloture on this vehicle, this piece of legislation. We are going to be asked to vote on cloture by no later than tomorrow on this matter, and we don't know what is in it. I don't know what is in it. I have had my staff on it since yesterday when it first made its appearance in my office in the form of several separate pages which I hold in my hand, various and sundry pieces of it, almost 500 pages.

Here we are going to be asked to vote on cloture on this measure tomorrow. I hope we don't invoke cloture. I hope Senators will not vote to invoke cloture on this matter tomorrow. The Senate is entitled to have more time in studying this measure before we vote on it. The American people are entitled to know more about what is in this bill as it comes to us now from the House, what is in the bill before we vote on cloture. I think people are entitled to that.

I say to the distinguished Senator from Connecticut, again, he is performing an extremely important service to the Senate, to his people, and to the people of the United States. I was in my office when I heard him talking. I heard him talking about the vaccines. I heard him talking about other areas of the bill which are new to him, some of which he had not seen. He indicated they are new to him.

Why should we vote? I ask this question. The distinguished Senator may not wish to answer it right now, but it is a question. I am within my rights to ask the Senator a question, if he is willing to listen to my question. Perhaps this is a rhetorical question. But why should Senators invoke cloture? Why should Senators vote to invoke cloture on a measure when they don't know what is in it? Many of them did not know what was in H.R. 5005 before the August recess, and many of the Senators, I assume, did not know a great deal about what was in that bill even after we debated it for a considerable length of time.

The distinguished Senator from Connecticut has put most of the summer

and a great deal of the spring of this year into his bill. He and his committee have worked hard. Mr. THOMPSON and others have worked hard on this homeland security bill.

I will take my own time on the floor later today to say these things, but I will just say this: We are being importuned by this administration, by this President, to vote quickly on this bill creating a department of homeland security. I think it is irresponsible of the administration to insist upon the Senate's acting on this legislation in such a great hurry.

One might say, well, they have had all summer. But we have not had all summer. We have something new here that was just brought into the Senate yesterday, and we are being importuned to vote for this legislation before we go out of session, presumably maybe at the end of next week, maybe not. But I think it is most irresponsible for the administration to put this kind of pressure on the Senate, especially when the administration has turned its back on appropriations bills that have been reported from my committee, the committee chaired by me and the ranking member, Mr. TED STEVENS, former chairman of the Appropriations Committee and soon to be chairman again.

I think the administration has had before it these various and sundry appropriations bills, many of which contain homeland security appropriations. Yet this administration has put the pressure on the other body, the Republican-controlled House, not to pass those appropriations bills.

There was homeland security. There was real homeland security. If the administration would just have taken the bonds or the chains or the handcuffs off the House and let it act on those appropriations bills, there is homeland security. If we really want to do something for the people, do it fast for them—and I will go into this in greater length later today—there was the chance. Instead of putting the pressure on that, instead of pushing hard to get the appropriations bills through and get them down to the President so he could sign them, the administration has instead put great pressure on the Senate now to pass this homeland security bill.

Yet we don't know what is in the bill. We haven't had much time.

My question is—the Senator may not want to answer it—does he not think that the Senate ought to take more time before invoking cloture? I respect the fact that sooner or later cloture will be invoked. But it wouldn't hurt—I will say this on my own—for this bill to go over until next year when we could have more time to look at the 485 pages—I may be missing one or two—so that we could take our time and know what we are voting on.

They will say: Something may happen. The terrorists may strike. We need to get this done.

Let me say to my dear friend the Senator and other Senators and to the

Chair: Passing this bill won't make one whit of difference if a terrorist attack occurs tonight, tomorrow, next week, next month. Passing this bill will not make one whit of difference. The people who are to protect us under this bill, if we ever get the bill passed and get it implemented, this new department up and running, the people who will be ensuring the safety of the American people under this bill are out there right now: Immigration and Naturalization Service, the Customs Bureau, the policemen, firemen, the emergency health personnel, the border security personnel, the security at the ports. These people are out there now. They are out there every day.

This bill, only for political reasons, is going to amount to a hill of beans. That will be all it will be worth. They can say, well, they passed the bill. But it won't make the people of this country a bit more secure.

As a matter of fact, they will be lulled into a feeling of security when they will be very insecure with this bill—as much so, or more, perhaps, than if we didn't pass it. I am one of those who, first, may I say to my friend—if he will allow one further comment and then my question—I am one of those who first advocated a Department of Homeland Security; I am one of the first to advocate it. But I have had the bitter experience of trying to get the Director of Homeland Security up before the Appropriations Committee, and Mr. STEVENS, the ranking member, joined me in inviting Mr. Ridge up before the committee, but the President said no. He put his foot down and said, no, he is on my staff; he doesn't have to come. We had no alternative but to go ahead with the seven department heads and various and sundry mayors and Governors throughout this country, and police organizations, health organizations, firemen organizations, and so on.

We came up with a good bill. But in that bill, we also included language that would have required the Director of Homeland Security to be confirmed by the U.S. Senate. So we said, OK, it won't be done by invitation; you will come because you are going to have to be confirmed by the Senate, and then you will come. So the administration saw that coming down like a Mack truck. They saw it coming down the track. It passed the Senate with 71 votes—at least 71, as I recall. There wasn't a finger raised against that provision, not an amendment offered to strike that provision; and the administration saw that bearing down on them like a Mack truck, so they rushed to get ahead of the wave, which they are pretty good at doing. Out of the bowels of the White House, they hatched this idea of homeland security, and here it was—not here it is. This is something new. It came up here. This Department of Homeland Security had been hatched by Mitch Daniels, Director of the Office of Management and Budget, and by Andrew Card, and by Tom

Ridge, and Mr. Gonzalez, the White House counsel. Those four eminent public officials hatched up this great, grand idea and unveiled it.

The President called us down for the unveiling. I remember, he said he had to go to St. Louis to make a speech, but before he went, he said he had this package. He didn't explain what was in the package. He referred to it as "this package." He wanted to see this package passed quickly and he was going to have to go to St. Louis and make a speech. I seldom go down to the White House. I am not invited much anymore, but I am not crying about that. I don't want to go down there, as a matter of fact. I went down when I was majority leader and minority leader and majority whip so much that I got tired of going. Others may have the pleasure. But on this occasion I went.

The President said here we have this package, and he said he wanted to thank the Members of Congress for their input. I scratched my head. What input is he talking about? The Members of Congress haven't had any input. He said, "I have to hurry and go to speak." He called on the Speaker for a few words. He called on the distinguished Republican leader here, and he called upon the distinguished Democratic leader, and he called upon the distinguished Democratic leader in the House, and then he was finished. He didn't call on me. I was just invited to come as an ornament, I suppose, one that is not often seen by people at the White House.

In any event, the President started off to make that speech in St. Louis. I said, "Wait a minute, Mr. President. I heard you say something about this package, how you want this passed. I don't know what is in this package." Then he said to somebody down the line that may have been a Member of the House, may have been a Democratic leader there—I don't recall—maybe I do, but I don't need to say. Anyhow, when reference was made to this "thing," that we need to pass this thing in time for the first anniversary of September 11, I said, "I heard something said about this 'thing,' that we need to pass it in time for the first anniversary. I don't know what this 'thing' is."

I kind of dismissed it in my feeble way, in that manner, saying I didn't know what they are talking about, this thing, this package. Nobody explained this "package" to me down there. Nobody explained what this thing was down there. So I came back up to the Hill, knowing little more than I knew when I went down.

I say all that to say this: Here, today, we don't even have the "package" they had that day. We don't even have the "thing" they were talking about that day. Here is a brand new animal that has been brought in here—480-odd pages—and they are saying we have to pass it. The Senator and I and others are going to be asked to vote for cloture on this "thing"—the new thing.

My question is, does not the Senator feel it would be time well spent if this Senate did not invoke cloture tomorrow, or maybe the day after, or next week, but would it not be time well spent if the Senate took the necessary hours to carefully study what is in this new package that has been dropped on our desks not more than 6 hours ago? Is that a fair question?

Mr. LIEBERMAN. I thank the Senator from West Virginia. It is a fair question. I would like to answer it by continuing to outline some of the shortcomings in the substitute before us, and then offering a conclusion, and then I will yield to the Senator from Illinois, who has been waiting to be recognized.

I thank the Senator from West Virginia for his comments and his recollection of the history here.

Mr. BYRD. Also, the Senator has made some valuable contributions today by pointing out already some of the differences that he sees in the new language. So it seems to me—I will answer my own question—that we need to take more time than just tomorrow in invoking cloture on this bill. We owe it to ourselves and to the people.

We are creating a brand spanking new, big, massive Department. In this package, we are going to make a massive transfer of power to the executive branch. I plead to Senators that they not vote for cloture on this tomorrow. At least give us another week.

I thank the distinguished Senator for his patience, which is a customary characteristic of his. I value him, and I am going to listen with great interest to what he continues to have to say about this measure.

Mr. LIEBERMAN. I thank the distinguished Senator from West Virginia once again. I mentioned, when the Senator asked a question or two, about the omission from the bill of the program that our committee created, which would have authorized a COPS-like program for firefighters, which would be critically important to local fire departments all around America, who are already spending more money to get ready to protect their people from terrorist attack. I want to go on with a few more of what I call the bad news in the substitute. The substitute also grants—it's ironic that I come to this moment now, but it grants the Secretary of the Department of Homeland Security broad reorganization—I'm sure Senator BYRD will speak to this later in the day—with no need for congressional approval. The President would simply submit a reorganization plan to Congress within 60 days after enactment. No congressional approval would be required, as it would under both Gramm-Miller and our committee bill. Only notice.

The substitute also contains a sweeping liability protection provision that eliminates punitive damages and provides other caps and immunities from

liability for any products that the Secretary of the new Department of Homeland Security certifies as antiterrorism technologies.

This provision, if construed broadly, could do serious damage to individuals' rights. The Secretary must simply designate that a new technology is antiterrorism-related, and the exemption and the protections that are provided by this section of the bill go into effect.

Perhaps the most egregious flaw is the bill would cap liability at the limits of a seller's insurance, meaning people who allege they have been injured by one of these technologies certified by the Secretary can go either completely or partially uncompensated even if a seller who is liable has more than enough money to compensate them because the provision of this bill says the limits of liability are the limits of coverage of the seller's insurance.

Even if, as I read this provision, the seller has assets and the plaintiff has proved that his or her injuries are the result of negligence by the seller, the liability is capped at the limit of the insurance policy. That is a significant change in tort law.

At various times in this Senate, I have been quite active in advancing what is broadly called tort reform. This section some may describe as tort reform, but I think it goes way over the line in compromising the rights of individuals under our system of negligence and tort law.

Finally, the bill fails to include a package of vital information technology reforms initiated by Senator DURBIN, who will speak soon, and cosponsored by Senator THOMPSON and myself that were included in our committee-approved legislation. This amendment would dramatically improve the way data is managed in the new Department, and that will be central to the Department's effectiveness of protecting the security of the American people at home.

It would also improve the way data is managed throughout all agencies related to homeland security by allowing agencies to share and integrate their data swiftly and seamlessly. By failing to tackle information technology management, the substitute misses a huge opportunity to fix one of the most frustrating bureaucratic barriers to effective homeland security, and it will be a shame if this provision, which is non-controversial, is omitted from the substitute.

Finally, I wish to say briefly, because I spoke to this yesterday when Senator McCain and I offered the amendment, I was deeply disappointed to find that the substitute bill fails to include an independent citizens commission to investigate the September 11 attacks. How can we learn from the past if we do not face up to our own failures honestly and directly and bravely? How can we reassure the American people we are taking every necessary step to protect them against terrorism if we

are unwilling to scrutinize every agency in our Federal system unflinchingly?

The answer, unfortunately, is we cannot. That is why the homeland security legislation our committee proposed was amended by the Senate by a resounding, overwhelming bipartisan vote of 90 to 8 to include a provision offered by Senator McCain and me and others to create a bipartisan, non-political blue ribbon commission to investigate the Government's failures in all the years leading up to September 11.

In fact, the earlier iteration of the so-called Gramm-Miller substitute embraced, after the Senate spoke so resoundingly, that same idea for a bipartisan commission. Yet this substitute omits that proposal. That is outrageous and unacceptable. We should not accept it, and I can tell you that the families of the victims of September 11 do not and will not accept it.

Senator McCain and I said yesterday, and I repeat today, that we, and I am sure many others on both sides of the aisle, will be persistent and steadfast and continue to search for and find every possible vehicle and method we can to get this independent commission to investigate September 11 adopted.

Let me now say by way of conclusion, I have tried to describe the good parts of this bill because, again, most of the proposals in the bill, the overall architecture of the new Department, and most of the specific provisions are taken from the bipartisan legislation that emerged from the Governmental Affairs Committee in the Senate, which I have been privileged to chair.

In fact, in some significant ways that I have outlined, this second iteration of the Gramm-Miller substitute has been improved to take in even more parts of our initial proposal. We have all learned together how to improve this legislation. That is all to the good.

I do disagree respectfully with my dear colleague from West Virginia because I believe there is an urgent necessity now to better organize our homeland defenses because the current disorganization was part of the cause of September 11. The continuing disorganization is dangerous. Yes, the various agencies are out there, but as I said at the beginning of my statement, everyone is in charge, therefore no one is in charge. We need to bring these agencies together. We need to eliminate overlap and save some money by doing that. We need to make them more efficient and, most of all, have a clear line of accountability.

There remains—and this really gnaws at me, and I know many Members of the Senate—a disconnection between too much of our intelligence community apparatus and law enforcement apparatus, including State and local law enforcement, and that disconnection means we do not have in one place all the information that can telegraph to this new agency that a terrorist at-

tack is coming and give us the time to stop it before the terrorists act. This agency will create such an intelligence division now. The urgent necessity for a new Department has to be weighed against the shortcomings and the late additions that I have described.

I cannot repeat the plain facts about our persistent vulnerabilities often enough. I have said them before and I will repeat them. The writer H.G. Wells once said:

Adapt or perish, now as ever, is nature's inexorable imperative.

Adapt or perish, and that is our challenge and our choice today. Adapt to the new terrorist threat or grow weaker and watch some of our fellow Americans perish.

Adapt to build on our strength and our ingenuity, or continue to have the American people live in fear.

Adapt or have your children grow up feeling that they are at the mercy of our terrorist enemies, no matter how strong we are in conventional military power, in economic strength, in cultural strength, in values, rather than seize the moment and control our own destiny through our strength and the organization of it.

A bill creating a Department of Homeland Security led by a strong and accountable Secretary will make sure that our domestic defense efforts do adapt to this new threat. It is really a source of continuing regret and frustration that the substitute comes to us now not only with compromises that have been made that are less than I would have liked—very few of us get exactly what we would like in legislation; that is the nature of the process—but that irrelevant and very troubling additions have been made to the legislation, and that is the balance that we are going to have to strike.

For my part, I have filed several amendments by the 1 o'clock deadline today to strike various parts of this substitute that I think are not only marginally relevant but, in some cases, totally irrelevant to the central task of homeland security, and not only do not add but subtract from the rights and freedom from fear of the American people.

It is nonetheless urgent to go forward and act on this measure. I, for one, do intend to vote for cloture to bring this debate to a conclusion, but I have attempted to fashion the amendments I have filed in a way that cloture will not prevent me from obtaining a vote in my attempt to strike some of the objectionable and unnecessary provisions of this substitute proposal.

"Adapt or perish, now as ever, is nature's inexorable imperative," those words of H.G. Wells speak to each one of us as we balance the good and bad in this substitute and decide how to vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I express my gratitude to the Senator from Connecticut, the chairman of the Governmental Affairs Committee. I do not

believe those following this debate, unless they have watched it for a long time, can appreciate the amount of time and effort that has been put into this bill by Senator LIEBERMAN and his staff. The record and history will demonstrate that before the President introduced a Department of Homeland Security, Senator LIEBERMAN not only introduced one, which I was proud to cosponsor, but passed it favorably from the Governmental Affairs Committee without the support of a single Republican Senator.

There was some confusion on the Republican side as to what the President's intentions were, but there was no confusion on the Democratic side. Senator LIEBERMAN believed, and still does, as I do, that a Department of Homeland Security is important for the defense of America against the threat of terrorism.

About 2 weeks after Senator LIEBERMAN's bill passed out of committee, the President introduced his own. Senator LIEBERMAN then addressed the issue again to make his bill and our bill conform more closely with the President's intentions and brought this matter to the floor. There was a controversy which ensued. It was an incredible controversy because it related to the rights of new employees in this Department. I use the word "new" advisedly because the 170,000 employees of the Department of Homeland Security are already working for the Federal Government.

With the passage of this legislation and its implementation, they will come under a new roof and a new title, but, frankly, they will be doing many of the same things they have done for years.

There was a question as to whether or not we would be able to protect these employees who had collective bargaining rights in the new Department. It was a contentious issue and one on which the White House and many Members of Congress disagreed.

Senator LIEBERMAN, again in good faith, tried to find some common ground. With the help of some of our colleagues, such as Senators Breaux and Landrieu of Louisiana, as well as many Republicans, we came up with compromise language weeks ago that could have raised this issue and moved it forward.

I say pointblank, there were Members of the Senate who did not want this issue resolved before the election. They did not want the Department of Homeland Security enacted before the election. They wanted to be able to campaign across America suggesting that the Democratic Senate had not passed this important legislation. As a result, they used every procedural trick in the book. They slowed down the process. They refused to have a vote and they got their way. We left for the election without the passage of this important legislation with the compromise language that had been prepared.

In many States and many congressional districts across the Nation, this

became a political issue. Sadly, it had an impact on the election far beyond its actual gravity because we could have passed this legislation, and sadly, we come today in an effort to try to bring this issue to a close in the hopes of doing it before we adjourn for the year, before the new Congress comes into session. I certainly hope we can achieve that.

The point has been made by Senator BYRD, Senator LIEBERMAN, and others that we were literally given a 484-page document, which passed the House of Representatives late last night, which creates this new Department of Homeland Security. There are many items in this document that are repetitive. Looking back to the President's original proposal and the proposal from the Governmental Affairs Committee, a lot of this is not new although many things are new. Many of us are trying to digest it.

I was paging through this bill as the debate was ensuing on the floor, picking out sections that raised questions in my own mind. If one looks around the Senate Chamber, they will see a 484-page bill on each desk. By my rough calculation, some 48,000 pages of documentation, many of which will never be read, are looked at by colleagues in the Senate. I do not say that being critical because, frankly, it is almost impossible for an individual Senator to monitor and evaluate every page of a bill. We rely on staff and people who we trust to get that done. But the fact is this just came over.

The reason I raise that issue is as soon as I finish this presentation, I am going to propose a second-degree amendment to Senator LIEBERMAN's amendment which relates to an issue that is completely ignored in this 484-page bill on the Department of Homeland Security.

To give a little background, on September 11, 2001, I was in a meeting in this building when word came that we had to evacuate because of the planes flying into the World Trade Center. With hundreds of others, I raced down the steps of the Capitol on to the lawn outside. We stood there, not knowing quite what to do next. I heard a sonic boom as we scrambled the fighter jets over Washington, DC, to prepare for further attack. We could see on the other side of the Capitol the black smoke billowing out of the Pentagon. Many of us who are entrusted with the responsibilities of serving in Congress were bewildered as to what had happened to our country and wondered what we could do, as individual Senators and Congressmen, to make it safer. I thought about it long and hard, and there is one area on which I decided to focus. I do not profess great expertise when it comes to first response in fighting terrorism, but the one omission I found that needed to be addressed in the administration of our Government was the information technology systems, the computer systems used by the Federal Government.

The reason I had been alerted to this problem was that in a hearing in the Senate Judiciary Committee a few weeks before September 11 we brought in the Federal Bureau of Investigation and, among other things, asked them about the state of their computers.

I am sorry to report to the Senate and those following this debate that the computer systems in the Federal Bureau of Investigation, the premier law enforcement agency in the United States of America, is disgraceful. It reflects a mentality within that agency that has resisted change, resisted new technology and, as a result, is currently operating with computer systems that small businesses in my hometown of Springfield, IL, would reject out of hand as archaic.

I dare say, we could bring in from anyplace in the United States a grade school student who is familiar with computers and they would find the FBI computer system laughable. What they are using to fight crime in the United States, to track down terrorism around the world, is outclassed by computers that can be purchased off the shelf at Sears, Best Buy, and Radio Shack. As hard as that may be to believe, it is a fact.

I also might add that we came to learn that the computer systems of the major agencies which we are depending on to protect America cannot communicate with one another. Would any of my colleagues want to be the CEO of a corporation with a variety of different departments and offices around America that had computer systems that could not communicate with each other? That is a fact today in the Federal Government. It is a fact of life, and it is a disgrace. This bill which we are considering to establish the Department of Homeland Security virtually ignores this problem.

How could we say to the American people, we are going to create a Department to make them and their family feel safer if we do not address the most fundamental issue of the exchange of information? In my concern over this issue, I decided to try to focus on it. I said this is the one thing I will work on. There are 535 Members of Congress. Everyone has a different agenda. I am going to try to carve out this niche and work on upgrading the computer systems in the FBI and creating what they call interoperability, the power of computers in different Federal agencies to communicate with one another. I have worked on it for over a year. I came up with some ideas based on historical experience.

I looked back in history because others have written of this challenge. They make reference to the Manhattan Project. For those who are not students of history, that was in 1939, before World War II. Before the attack on Pearl Harbor, our scientists in America discovered nuclear fission. It was a breakthrough. They knew they had something with great potential with the nuclear fission process. They were

not quite sure what they could do with it on a positive or negative basis.

Then President Franklin Roosevelt created the uranium committee to explore the various scientific things that could be done with nuclear fission and report back. The committee, like most, did some things but did not do them very quickly and did not produce much.

Then came December 7, 1941. The Japanese attacked Pearl Harbor. Within 2 days, President Roosevelt came before a joint session of Congress and asked for a resolution of war against the empire of Japan and its allies, Germany and Italy, and America was truly at war.

In August of 1942, President Roosevelt was reminded about this uranium committee. He made a historic decision. He put them out of business. He said, we want to create a new project under the Army Corps of Engineers. We are going to, in this new project, try to take on a much bigger challenge. In charge of this project was an individual, a commanding officer named General Leslie R. Grove. Under what was called the Manhattan Project, we said to General Grove, you have the responsibility to gather together in the Manhattan Project the scientific, industrial, and military capability of America so that we can take nuclear fission and develop weapons that could win World War II.

General Grove is an interesting figure. From what I have read, I understand he was a powerful individual. In the course of several years, 4 years, he spent \$2 billion. This is the early 1940s. In today's dollars, that would be \$20 billion on the Manhattan Project. He developed four bombs, which were detonated over Japan, which brought an end to World War II. The Manhattan Project was successful.

Think about that when we talk about our own computer capability. I believe we need a Manhattan Project when it comes to the computer information technology of our Federal Government. I believe we need to empower a person and an agency to not only look to bring the most modern technology to each agency but to determine how they work together. That is what is missing.

The Department of Homeland Security bill, 484 pages long, does not even envision this as a challenge to be met. How, then, can we offer security to this country? How, then, can we use the best technology and scientific resources to make this a safer nation?

Currently, each of the agencies—the Coast Guard, the Customs Service, FEMA, INS, the Secret Service, the new Transportation Security Administration, and others—are to be coordinated under this Homeland Security Department. They each operate with their own information technology system and with their own budget. Needless to say, they do not communicate with outside agencies as the FBI or the CIA. These agencies already spend about \$2 billion a year on information

technology. The President is asking for \$37.5 billion for a new Department, which is being gathered from current budgets.

Let me illustrate for a moment an example of why this challenge is important. A few hours ago, we considered port security—I voted for it; 95 Senators did—to try to make our ports safer in the United States. Of course, representing Chicago and Lake Michigan, I understand the importance of port security. Take a ship entering the U.S. waters that comes down the St. Lawrence Seaway. It comes into the Great Lakes. What happens? Four agencies of the Federal Government collect information on that ship. One agency determines whether the ship is carrying contraband. Another Federal agency checks whether the ship has paid its tariffs and fees. Another agency determines whether the ship and its crew comply with immigration law. And another agency checks for adherence to health and safety regulations. One ship, four different Federal agencies.

As currently planned, much of this information will end up in separate systems—some of them new and expensive. One of those, a \$1.3 billion Customs Services project known as the automated commercial environment, is an import processing system. Another, the student exchange and visitor information system, is being developed by the Immigration and Naturalization Service. Other border protection is held on databases held by the Coast Guard and by the Department of Agriculture.

The new Transportation Security Administration also will collect and hold relevant information in its systems. Think of how many different agencies I have just mentioned are concerned about the one ship that we fear may be bringing the wrong people with the wrong cargo to threaten the United States.

Now reflect on this: None of these information technology systems are designed to communicate with one another, none of them. How in the world can we assure the American people of their safety when we are dealing with such archaic standards, when we are ignoring the most basic requirement—that these agencies work together and share information? This bill, 484 pages in length, ignores this challenge. We cannot ignore this challenge. Frankly, we have to respond because these divergent systems will ultimately need to be linked to the Homeland Security Department. We need to make certain there is a seamless interconnected system.

We have to ask key questions about the best way to ensure that the homeland security components communicate and share information with one another. By whom, when, how, and at what cost can the systems be linked. In addition, it is equally important to establish appropriate links between the Homeland Security Department and other agencies, particularly the intel-

ligence community and law enforcement agencies.

Think about the ship coming into Lake Michigan from a foreign port and all of the questions that I just proposed. Would you not want to make certain that the FBI and the CIA had access to that information? In addition, the National Security Agency, Department of Defense, State Department, State and local officials, all of them could benefit by having access to that information. These links are needed because the Homeland Security Department will be inordinately dependent upon full and timely information exchange.

We cannot put a soldier or policeman on every corner in America and make this a safe nation. But what we can do is gather important information and share it so that it can be evaluated and coordinated and acted upon. That cannot happen with this bill as it currently stands before the Senate. This bill does not even envision that as a goal to be met. The status quo, which unfortunately this bill in many ways preserves, is not adequate to do the job.

At a June 26 Governmental Affairs Committee meeting focusing on the Department of Homeland Security in the intelligence community, I introduced the concept of ensuring interoperability, the communication of different computer systems in the Federal Government. I talked about the history of the Manhattan Project. My premise was if we are going to combine the intelligence resources and gathering of the Department of Defense, the Department of State, the Department of Justice, and the new Department of Homeland Security, would it not make common sense to establish a Manhattan Project when it comes to information technologies so all these agencies can communicate with one another, share information, and try to make the job more effective?

We have all this discussion on reorganization, but we are not facing the basic challenge. Given the current state of affairs in the Federal information technology systems, it is obvious we need to address the information technology issues that are raised as part of the new Manhattan Project.

Let me tell you about some of the current problems and challenges we face, if you wonder how we are going to make America safer against the threats of terrorism. Six years ago the U.S. Congress mandated the Immigration and Naturalization Service to establish a database to record visa holders exiting the United States. Understand the process. You are a foreign national and you want to come to the United States for any number of reasons—as a student, as a visitor, for some other reason. You go through the Immigration and Naturalization Service and a visa is offered to you through our consulates overseas. That is recorded. That is part of their database.

We then said to the INS we want you to make a record of those leaving the

United States so we have, at any given time, an inventory of people who are visa holders in our country. It makes sense. If you don't do that, frankly, you are turning loose visa holders with no accountability as to whether they overstayed the legally permitted period for their visa or something else.

Six years ago we said to the INS, come up with a database that will record the exit dates of visa holders. We received a report a few months ago from the Director General that, despite 6 years of effort, the INS is unable and incapable of creating this database. Think about that for a second, about making America safer, about visa holders and people coming into this country. We have been unable in a 6-year period of time to establish that database.

Let me give you one other illustration. Both the Federal Bureau of Investigation and the Immigration and Naturalization Service collect fingerprints. They, of course, do that in the course of law enforcement, in the course of people visiting the United States. Three years ago we said to these two agencies, the INS and the FBI, combine the fingerprint database. We want to know if you have a person who is a criminal suspect who also may be out of status with the Immigration and Naturalization Service. We want to put that information together into one single database of fingerprints available to law enforcement in the United States. Three years later, still it has not been done.

As we look at the challenges we face, it is one thing to move the boxes around on the chart, to talk about a new Department of Homeland Security with 170,000 employees, but it is quite another to make certain that when these employees sit down at their desks in their offices, they have computer capability to literally protect America. This bill does not address that.

This is our Department of Homeland Security. It is being given to us by the House, which will soon adjourn without any effort to address this challenge.

An article in the July 27 edition of *Fortune* magazine also ascribes such a styling to the concept, pointing out:

There is an abundance of breathtakingly versatile technology available to counter the menace of terrorist attacks at home. Now for the bad news: Computers are only as smart as the bureaucrats who use them.

This is *Fortune* magazine speaking.

It may require a Manhattan Project of social engineering to induce agencies that have traditionally viewed each other mostly as rivals for budget dollars to reach out and hold hands.

At the hearing which we held before the Government Affairs Committee, I asked several of our witnesses to comment. One of the witnesses was GEN Hughes, LTG Patrick Hughes, U.S. Army, retired, former director of the Defense Intelligence Agency, 1996 to 1999. I talked to him about what I have just said in my opening remarks here.

Here is what he said—first replying. General Hughes said to me:

First, your characterization of this problem is, in my view, right, but it is not about technology. The technology to do the things that you are talking about wanting to do is present and available. It is about parochial interests, managing and constructing the technology for their own purposes, as opposed to the synergistic, larger effect of mission support across the government.

This man, who for 3 years had the responsibility in the Defense Intelligence Agency, knows what the problem is. He knows, unfortunately, that it is a problem that is not addressed by this Department of Homeland Security proposal. The amendment which I propose to create a Manhattan Project through the Department of Management and Budget had the bipartisan cosponsorship of Senator LIEBERMAN, who was on the floor earlier, as well as Senator THOMPSON, who is here. It was added to the bill by unanimous consent of all members of committee. Section 171 of the committee-approved legislation requires the Director of the Office of Management and Budget to develop a comprehensive enterprise architecture for information systems of agencies related to homeland security.

It calls for designating a key official at OMB, approved by the President, whose primary responsibility is to carry out the duties of the Director. This is our General Grove. This would be our Manhattan Project. The President would have the last word on this person and the responsibilities he would have to execute. OMB must make sure agencies implement the plan and regularly submit status and progress reports to Congress, as they should.

The enterprise architecture and resulting systems must be designed so they can achieve interoperability between and among Federal agencies responsible for homeland security and homeland defense, whether inside or adjunct to the new Department.

These systems must be capable of quick deployment. These must be readily upgraded with improved technologies. Effective security measures must be maintained as well.

The OMB director and Secretary of the new Department shall also facilitate interoperability between information systems of Federal, State, and local agencies responsible for homeland defense. This is a common complaint. I have heard it from the City of Chicago and other agencies across my home State, that the whole question of homeland security has to work its way down to the first responders at the local level, as does the information. This bill, sadly, does not address that because it does not include the amendment which I proposed in committee.

Enterprise architectures require systematically thinking through the relationship between operations and underlying information technologies. Used increasingly by industry and some governments, they can reduce redundancies, modernize operations, and improve program performance.

Historically, Federal agencies have developed information systems in what you call, euphemistically, parochial stovepipes with little or no thought about communication with other agencies. Agencies vital to homeland security are currently plagued by outdated technology, poor information security, and, unfortunately, not the necessary motivation to make the positive change.

An article appearing in this month's issue of *Government Executive* magazine captured the problem. Let me give you just a few words from that article, if I might. This is from *Government Executive*, September, 2002:

When a computer mistakes a 70-year-old black woman for a 28-year-old white man who is a triple murder suspect on the FBI's terrorist group list, something is wrong with the computer or the information inside it. The terrorist list on which this person's name appeared is just one of more than 25 maintained by dozens of law enforcement, intelligence and Defense Department agencies. Those lists are not integrated and often are not shared. We must build a system of systems that can provide the right information at all the right times. Information will be shared horizontally, across each level of government, and vertically among Federal, State, and local government, private industry, and citizens. Electronically tying together the more than 20 agencies to be merged into a new Department will harness their security capabilities, thereby making America safer.

It goes on to quote John Koskinin. He was the Federal Y2K chief brought to avert what we thought might be a computer crisis. He was asked to assess the challenge of bringing them together. I am for bringing them together. Here is a man who worked to analyze all the computers of the Federal Government and what he says is, I am afraid, chilling. I quote:

You'll never get your arms around it.

He believes placing all the security agency systems under one roof and building more systems will not make agencies communicate. He understands the challenge we face. This bill does not face that challenge and that, unfortunately, is a terrible shortcoming.

Interoperable information systems would permit efficient sharing of data and better communication. I have discussed this with a man I respect very much. Tom Ridge and I came to Congress in 1982, and we served many years together in the House. I was one who praised the President for choosing Governor Ridge of Pennsylvania as the first person to direct our homeland security operation. I called him on this issue. I explained to him what it was all about. Tom said to me, in his own words, he believed that what I am proposing here in this amendment would be a "force multiplier." It would enhance our technology, enhance our ability to protect America.

This substitute which we have before us does not include that force multiplier. This substitute, unfortunately, falls short of utilizing the resources we have most effectively.

It scratches the surface by tasking an under secretary with ensuring informational systems compatibility. Yet there is no corresponding duty outside of this Department of Homeland Security with any other agency or any other director in government.

If there is a coordination of information technology within the Department of Homeland Security, there is no premise or promise that we are going to have this agency communicate with the CIA, with the FBI, with the Department of Defense, with the Department of State, and without that interoperability, we are missing this force multiplier. The amendment would make sense and fill the gap. It would give an overarching job to OMB for homeland security enterprise architectures.

I think we can all agree there is no one single magic silver bullet to protect America. But we have to strengthen our security. We have to use the information we collect and use it effectively.

When you take a look at the systems, we have to consider a recent challenge. On October 23 of this year—a few weeks ago—GovExec.com, an online news service, reported that the FBI ran into serious shortcomings in its effort to capture the Washington-area snipers. A system known as “Rapid Start” was set up at the investigation command center in Rockville, MD. Leads called in to the center and to hotlines were manually entered into a database which organized the information to try to find the snipers. They assigned investigators to follow up. According to the news article, Rapid Start—the computer system at the FBI—was never designed to handle the large volume of information and the 67,000 calls they received. The system was overwhelmed. What is even more compelling is that Rapid Start was created by the FBI as a way to avoid working with the Federal Bureau of Investigation's existing computer system, the “Automated Case Support System.” The agents of the FBI had already determined the existing computer capability at the FBI could not handle the investigation to find two snipers in the Washington, DC area. The FBI's antiquated technology systems don't allow its agents to share information among field offices.

Let me give an illustration. The September 11 disaster occurred. Within a few hours, we collected photographs of the 19 suspected terrorists who we believed to be on those airplanes. The FBI, when they collected these photographs, communicated that information and these photos to their field offices.

How would you do that if you were at a home computer and you wanted to send a photograph to your grandson or your granddaughter? Virtually every computer system that is worth its salt has the capacity to transmit photographs. But not the computer system of the Federal Bureau of Investigation. They had to FedEx the photos of the

suspects to their field offices because the computer system couldn't transmit photographs.

Think about that. Would you buy a computer system if you were a law enforcement agency that couldn't do that? That is a fact today.

The Automated Case Support System that Rapid Start was built to circumvent was blamed for the loss of 4,000 documents in the prosecution of Timothy McVeigh for the Oklahoma City bombing.

According to a recent article, only in recent months did the FBI start a computer system through a project known as Trilogy. It is starting to replace obsolete desktops. I have been talking about this for a long time. This committee has tried to address it. We did address it with a bipartisan amendment agreed to by Senator LIEBERMAN, Senator THOMPSON, Republicans and Democrats in the committee. We put it in the bill. But it is not in this bill that has come over to us from the House of Representatives.

What I am proposing to my colleagues on the Senate floor is this: Please let us depoliticize this issue. Why in the world should this become a partisan matter? The computers of this government are going to serve all of the citizens. No one is going to be able to have bragging rights—Democrats or Republicans, or anyone of any other political stripe. It is a question of whether we are going to put in place the resources and tools and weapons we need to fight terrorism.

The amendment which I am about to propose as a second-degree amendment would do just that. It would take the exact language from the Governmental Affairs Committee on a bipartisan basis, put it in this bill, and give us a chance to establish interoperability and enterprise architecture across the Federal Government.

How in the world can we pass this legislation without doing that? How can we leave Washington and say to America, “Sleep safely. You know the terrorist threats are there. We are doing everything we can”? We are not.

This 484-page bill fails in one of the most basic challenges. It does not challenge us to establish the very best in computer technology for the Federal Government. The fact of the matter is our current system doesn't even measure up to the most basic standards of requirements of computers and computer basics across America. Shouldn't we bring to the American people the very best in computer technology to protect our Nation, our families, our children? That, I think, is what is at stake here.

I implore my colleagues. I understand what is going on here. We were told the House will leave town, we will get this 484-page bill, don't change a period, a comma, or a single word—no amendments, take it or leave it—and we are going home. That isn't good. That really isn't good.

I think the Senate has a responsibility. We can identify the glaring

omissions from this bill—and one that ultimately has to be corrected. But in the months before we return, while this problem still festers and looms, we are not going to be protecting America as much as we should. We will not be providing the American people the kind of defense against terrorism which they deserve. We will not be using the best resources of our government and technology to make America safer.

I am hoping my colleagues will consider this amendment and give it the same type of bipartisan approval they did in the Governmental Affairs Committee.

AMENDMENT NO. 4906 TO AMENDMENT NO. 4902

I would like to offer the amendment which I filed with the clerk as a second-degree amendment to the pending Lieberman amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 4906 to amendment No. 4902.

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

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

The amendment is as follows:

(Purpose: To provide for the development of a comprehensive enterprise architecture for information systems to achieve interoperability within and between agencies with responsibility for homeland security, and for other purposes)

At the appropriate place, insert the following:

SEC. . INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) DEFINITION.—In this section, the term “enterprise architecture”—

(1) means—

(A) a strategic information asset base, which defines the mission;

(B) the information necessary to perform the mission;

(C) the technologies necessary to perform the mission; and

(D) the transitional processes for implementing new technologies in response to changing mission needs; and

(2) includes—

(A) a baseline architecture;

(B) a target architecture; and

(C) a sequencing plan.

(b) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall—

(1) endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable;

(2) in furtherance of paragraph (1), oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation;

(3) as the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (2); and

(4) report to Congress on the development and implementation of the enterprise architecture under paragraph (2) in—

(A) each implementation progress report required under this Act; and

(B) each biennial report required under this Act.

(c) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—

(1) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(A) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(B) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(2) TIMETABLES.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan under paragraph (1).

(3) IMPLEMENTATION.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall—

(A) ensure the implementation of the enterprise architecture developed under paragraph (1)(A); and

(B) coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (1)(A).

(4) UPDATED VERSIONS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under paragraph (1), as necessary.

(5) REPORT.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan under paragraph (1).

(6) CONSULTATION.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan under paragraph (1).

(7) PRINCIPAL OFFICER.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget, whose primary responsibility shall be to carry out the duties of the Director under this subsection.

(d) AGENCY COOPERATION.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (c).

(e) CONTENT.—The enterprise architecture developed under subsection (c), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

- (1) rapid deployment;
- (2) a highly secure environment, providing data access only to authorized users; and
- (3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

Mr. DURBIN. Madam President, let me clarify one point. Recent news stories indicate the former national security adviser John Poindexter is working at the Department of Defense to develop a plan to shift private database research in fear that it might be useful for intelligence purposes. That proposal raises some privacy questions, I concede. Another mistaken news story suggests that homeland security will facilitate that kind of investigation into private databases.

My proposal has nothing to do with this DOD plan. My proposal focuses only on making sure the Federal Government computer databases can communicate with one another when necessary to make certain, for example, that the INS and the FBI can share internal information—not information on private databases—to help protect against terrorist risk.

I yield the floor.

VISIT TO THE SENATE BY MEMBERS OF THE EUROPEAN PARLIAMENT

Mr. DASCHLE. Madam President, one of the privileges accorded to the majority leader is the opportunity to welcome and to introduce our fellow legislators from the European Parliament. This is a tradition that began in 1972, and it has continued every year since.

Earlier this year in July, we welcomed the President of the European Parliament to the Senate. Today, I am pleased to welcome another 16 of his colleagues representing countries from across that great continent. As I said when Mr. Cox visited in July, this tradition is especially meaningful, because although the Atlantic Ocean separates us from our European friends, we are certainly connected—connected in beliefs and in the rule of law, and a commitment to the betterment of the people we serve and the world we share.

Today's visit has added significance, coming as it does at a period of heightened concern across Europe about the potential new terrorist attacks.

So we reiterate today our strong determination to stand together, united by our shared values and by our commitment to stand, as we have for now so long, on issues related to commerce, on issues related to trade, and on issues related to war.

I ask unanimous consent that the names of our colleagues from the European Parliament be printed in the RECORD.

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

EUROPEAN PARLIAMENT DELEGATION FOR RELATIONS WITH THE UNITED STATES, 55TH EP/US CONGRESS INTERPARLIAMENTARY MEETING, 11–17 NOVEMBER 2002, WASHINGTON, DC, AND SAN DIEGO

[List of participants (16) in protocol order]

Group	Country
Mr. Jim Nicholson, Chair	PPE–DE United Kingdom.

EUROPEAN PARLIAMENT DELEGATION FOR RELATIONS WITH THE UNITED STATES, 55TH EP/US CONGRESS INTERPARLIAMENTARY MEETING, 11–17 NOVEMBER 2002, WASHINGTON, DC, AND SAN DIEGO—Continued

[List of participants (16) in protocol order]

Group	Country
Mr. Bastiaan Belder, 1st Vice-Chair	EDD Netherlands.
Mr. Harlem Desir, 2nd Vice-Chair	PSE France.
Mr. Renzo Imbeni	PSE Italy.
Mr. José Pacheco Pereira	PPE–DE Portugal.
Mr. Jorge Salvador Hernandez Mollar	PPE–DE Spain.
Ms. Erika Mann	PSE Germany.
Mr. Jas Gawronski	PPE–DE Italy.
Ms. Imelda Mary Read	PSE United Kingdom.
Mr. Dirk Sterckx	ELDR Belgium.
Ms. Nuala Ahern	Verts/ALE Ireland.
Mr. Peter William Skinner	PSE United Kingdom.
Ms. Arlene McCarthy	PSE United Kingdom.
Mr. Brian Crowley	UEN Ireland.
Mr. Marco Cappato	NI Italy.
Ms. Piia-Noora Kauppi	PPE–DE Finland.

PPE–DE Group of the European People's Party (Christian Democrats) and European Democrats.

PSE Group of the Party of European Socialists.

ELDR Group of the European Liberal, Democrat and Reform Party.

Verts/ALE Group of the Greens/European Free Alliance.

GUE/NGL Confederal Group of the European United Left/Nordic Green Left.

UEN Union for Europe of the Nations Group.

EDD Group for a Europe of Democracies and Diversities.

NI Non-attached.

Mr. DASCHLE. I would also like to notify Senators that our colleagues from the European Parliament are available now to meet on the floor. I welcome them. I am delighted they are here.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Chair recognizes the majority leader.

Mr. DASCHLE. Mr. President, I reiterate again our thanks to our colleagues for their willingness to join us on the Senate floor. It is a real pleasure for us to have the opportunity to talk with them. We wish them well in their travels within the United States.

We again reiterate how welcome they are and how hopeful we are that we can continue to maintain the dialog, the friendship, and the partnership that we have as countries interested in a mutual goal.

We thank them for being here.

HOMELAND SECURITY ACT OF 2002—Continued

Mr. DASCHLE. Madam President, I now ask that we return to the regular order.

The PRESIDING OFFICER (Ms. CANTWELL). Regular order.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I have sought recognition to comment on the bill generally, and to discuss three amendments which I have filed.

I believe it is vitally important that the Senate conclude action on homeland security at the earliest possible date. And I believe, regrettably, but importantly, that we should accept the