did a lot of work together on the Interior Appropriations Committee. I always found him to be easy to work with, someone who is very set in his views but would tell you how he felt. That has not changed in all of the years I have known him.

The reason I admire and respect DON NICKLES is I do not agree with a number of things he wants to do politically and tries to do politically, but he believes in those things. These are ideological feelings he has, and I have great respect for people who do things based on ideology. So I am going to miss DON NICKLES in this capacity, and I want him to know that I have great admiration and respect for him, and I consider the friendship we have developed over the years as something that is very important to me.

I say to MITCH MCCONNELL, who is going to take his place, that I welcome him. He will be assistant to the Republican leader, Senator LOTT, and will do a good job for him, but also for the Republicans generally. I have told him this personally and I say publicly, anything I can do to help the transition to make it more smooth, I will be happy to do that.

MITCH MCCONNELL is someone whom I have gotten to know. MITCH MCCONNELL has held different leadership positions on the other side, including having been the campaign chairman, where he did an excellent job. He served in other capacities with the Republicans. A lot of times I disagree with what MITCH MCCONNELL does politically, but he never hides his feelings from anybody. Campaign finance reform: There was a train moving down the track, and he was the only one brave enough to stand in front of it, and he never left. I have admiration for his stand on that issue, even though I disagree with what he wanted to try to do.

So I will miss DON NICKLES. I welcome Senator MCCONNELL. I have great respect for his abilities and look forward to working with him.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

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

Thereupon, the Senate, at 4:17 p.m., recessed until 5:40 p.m. and reassembled when called to order by the Presiding Officer (Mr. DAYTON).

UNEMPLOYMENT INSURANCE EXTENSION

Mr. DASCHLE. Mr. President, I come to the floor to make one final plea with regard to unemployment compensation. It is important to remember what the Senate has done as we reflect back over the last many months in our efforts to deal with this issue.

We offered an amendment that was sponsored by our departed, distinguished Senator Paul Wellstone. That legislation was the same as legislation that Congress passed when the first President Bush was in office in the early 1990s. We tried to pass it. Unfortunately, it was blocked by our Republican colleagues on eight different occasions.

Again, let me repeat. That was what we had in place when the first Bush administration was in office. Unemployment benefits that were actually extended three times when President Bush Sr. was in office.

The Senate then took up a bipartisan compromise to extend benefits for just 3 months. Republicans and Democrats got together. On the 14th of November we passed a simple extension for 3 months. Once again, the House refused to act.

So we took what was originally acceptable to the senior Bush administration, and that didn't work with the House. Then we passed what worked on both sides of the aisle here in the Senate for a simple 3-month extension, and that too didn't work for the House.

Over the course of the last 48 hours, we have been involved with House leadership, asking if there was any possible compromise, any way that we could extend it for 2 months, 1 month, any way that somehow we could send a message to the almost one million people who will lose their benefits on the 28th of December and to the 95,000 people who will lose them each week following the 28th of December. Hundreds of thousands of people, ironically, right over the Christmas holidays will lose any opportunity to provide for their familiar with unemployment insurance.

I must say I am disappointed to announce to my colleagues that once again our House Republicans said no.

I have to say that I think it is a story right out of Charles Dickens. I can't imagine that under these circumstances, even for a month, they couldn't see fit to act. Ebenezer Scrooge had a last-minute conversion. I hope that our Republican colleagues in the House will do so.

They are coming back on Friday and the Senate's bipartisan 3-month extension is waiting. I would urge the President—I ask President Bush—to call on the House Republican leadership to recognize the consequences of their inaction and pass our bipartisan unemployment extension.

We were, as I said, prepared to take whatever action necessary. We would have stayed in session if we had to to accommodate something that the House could have done to extend those benefits for a couple of months, which would have allowed us to work out something for a longer period of time.

That is my plea, my hope, recognizing, as I say, that hundreds of thousands of people will be affected at the worst possible time of the year.

I again renew that request. I urge the President to act. I urge our House colleagues to reconsider.

Mr. FITZGERALD. Mr. President, I want to call upon the House to act on the unemployment insurance compensation relief that we have passed in this body. I have been a cosponsor with other Members on this side of the aisle, as well as Senators CLINTON and SARBANES on the Democratic side.

I think we need to pass the legislation over in the House which has already cleared this body. If we do not, benefits are going to fall off the cliff on December 28, as the majority leader stated. I hope the House will take up that important legislation and at least extend the benefits until we can come back and deal in the new year with this issue.

PRESIDENTIAL AUTHORITY TO INTRODUCE ARMED FORCES INTO IRAQ

Mr. BYRD. Mr. President, earlier this year, I wrote to a number of constitutional scholars advising them that I was concerned about reports that our Nation was coming closer to war with Iraq. I asked a number of esteemed academics their opinion as to whether they believed that the Bush administration had the authority, consistent with the U.S. Constitution, to introduce U.S. Armed Forces into Iraq to remove Saddam Hussein from power.

All of the scholars I consulted responded by stating that, under current circumstances, the President did not have such authority. Several of the professors I consulted, namely Peter Raven-Hansen of George Washington University Law School, and Philip Trimble, Professor Emeritus of the UCLA School of Law, were kind enough to call and discuss their views on this subject with my office. I would like to take this opportunity to thank them for taking the time to provide me with their thoughts on this matter.

While those professors contacted me by phone, others provided written responses. I have previously submitted for the RECORD the responses of professors Michael Glennon of the Fletcher School of Law and Diplomacy at Tufts, Jane Stromseth of Georgetown University Law Center, Laurence Tribe of Harvard Law School, and William Van Alstyne of the Duke University School of Law.

Now, I would like to submit four additional responses I received on this same subject from professors Jules Lobel of the University of Pittsburgh School of Law, Thomas M. Franck of the New York University School of Law, Bruce Ackerman of Yale Law School, and Larry Sabato of the University of Virginia. I found their analyses of this important issue to be exceptionally learned and informative. For this reason, I ask unanimous consent that their responses be printed in the RECORD.

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

UNIVERSITY OF PITTSBURGH
SCHOOL OF LAW

Pittsburgh, Pennsylvania, August 2, 2002.

Senator ROBERT C. BYRD,
U.S. Senate, Committee on Appropriations, Washington, DC.

DEAR SENATOR BYRD: Thank you for your letter of July 22, 2002 requesting my analysis of President Bush's constitutional and/or legislative authority to introduce U.S. Armed Forces into Iraq for the purpose of removing Saddam Hussein from power. I too, am deeply concerned that the Bush Administration is moving toward war with Iraq, and doing so without congressional authorization. I only received your letter Thursday, August 1 and unfortunately leave for vacation on Saturday August 3rd. Because of the importance of this issue, I intend to send you my opinion analysis today by FAX.

I. PRESIDENT'S CONSTITUTIONAL AUTHORITY

As you correctly state, Article I, Section 8 of the Constitution provides Congress the power to, among other things, declare war. (It also provides an important power which is omitted from your letter, but which I and other scholars have argued was designed to prevent the President from unilaterally engaging in reprisals, or limited wars—the power to issue letters of marque and reprisal.)

The meaning of the power to declare war is course, contested, with Presidents at times asserting the power to engage U.S. troops abroad in various limited actions. I, along with many other constitutional scholars believe that the Constitution requires congressional authorization for all non-defensive, non-emergency deployment of U.S. forces in combat against another country.[1] Nonetheless, proponents of Executive power argue that the President can initiate minor uses of force without obtaining congressional approval. Despite this dispute, virtually all scholars agree with Judge Greene's interpretation of the war powers clause in the case of *Dellums v. Bush:* where ''the forces involved are of such magnitude and significance as to present no serious claim that a war would not ensue if they became engaged in combat,'' Congress has the authority under the Constitution to decide upon whether to go to war. 752 F. Supp. 1141, (D.D.C. 1990). In *Dellums,* Judge Greene held that in the context of the U.S. threat of war against Iraq over its invasion of Kuwait, ''the Court has no hesitation in concluding that an offensive entry into Iraq by several hundred thousand United States servicemen . . . could be described as a 'war' within the meaning of Article I, Section 8, Clause II of the Constitution'' To put it another way: the Court is not prepared to read out of the Constitution the clause granting to the Congress, and to it alone, the authority ''to declare war.'' 752 F. Supp., *supra* at 1146.

In the present situation the magnitude and significance of any United States invasion of Iraq to overthrow Saddam Hussein requires congressional approval. The courts, scholars and even past Administrations have recognized that offensive action involving significant numbers of U.S. troops facing a substantial enemy requires congressional approval. *See, e.g., Mitchell v. Laird,* 488 F.2d 611, 613–14 (D.C. Cir. 1973); *Berk v. Laird,* 429 F.2d 302, 305 (2d Cir. 1970); Moore, *The National Executive and the Use of the Armed Forces Abroad, in* 2 The Vietnam War and International Law 808, 814 (Falk ed. 1969). *See also* Moore, *Emergency War Powers, the U.S. Constitution and the Power to Go to War,* 159, 161 *in* The U.S. Constitution and the Power to Go to War (Gary Stein & Morton Halpern eds., 1994); Peter Spiro, *War Powers and the Sirens of Formalism,* 68 N.Y.U. Rev. 1338, 1353 (1993). *See also* Joseph Biden & John Pitch III, *The War Power at a Constitutional Impasse: A Joint Decision Solution,* 77 Georgetown L.J. 367, 400 (1988); Major Geoffrey S. Corn, *Presidential War Power: Do the Courts Offer Any Answers?,* 157 Mil. L. Rev. 180, 252 (1998) (''Certainly the initiation of significant offensive hostilities in such a policy decision, which under our constitutional system of government should not be made without the approval of Congress.'') *See also* Letter of Assistant Attorney General Walter Dellinger, September 27, 1994, reprinted at 89 Am. J. Int'l 122, 126 (1995) (recognizing that where U.S. forces attacked another country without the consent of the recognized government, leading to prolonged hostilities, inflicting substantial casualties on the enemy, and involving such ''extreme'' uses of force as sustained air ''bombardment,'' the United States was engaged in ''war'' for constitutional purposes requiring congressional authorization).

William P. Rogers, when he was President Nixon's Secretary of State, argued that Congress' power to declare war is not ''purely symbolic'':

''While the legislative form in which the power is exercised may change, nevertheless the constitutional imperative remains: if the nation is to be taken into war, the critical decisions must be made only after the most searching examination and on the basis of a national consensus, and they must be truly representative of the will of the people. For this reason, we must ensure that such decisions reflect the effective exercise by the Congress and the President of their respective constitutional responsibilities.''

William Rogers, Congress, the President and War Powers, 59 Cal. L. Rev. 1194, 1212 (1971). Therefore, I conclude that any invasion of Iraq to remove Saddam Hussein would involve such significant forces and significant casualties so as to be inescapably categorized as a war which under Article I, Section 8 must be authorized by Congress.

II. WAR POWERS RESOLUTION

The War Powers Resolution clearly would apply to any U.S. effort to attack Iraq to remove Saddam Hussein, since such an effort would introduce U.S. Armed Forces into imminent or actual hostilities. Therefore Section 4(b)'s limitation on such action to 60 (or 90) days would apply, as would the reporting or consulting provisions of the Resolution. I would also argue that the Resolution was not intended to, nor can it override the Constitution's clear proscription that only Congress can decide to engage the U.S. in an offensive attack on another country. Therefore, prior to any such invasion, congressional authorization must be sought and obtained by the President.

III. POTENTIAL LEGISLATIVE AUTHORITY FOR WAR AGAINST IRAQ

You also ask about two potential legislative sources of authority for a Presidential decision to use force against Iraq. Public Law No. 107–40 does not provide authorization for the President to attack Iraq. The language of Section 2 of the Act authorizes the President to use force against nations he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored organizations or individuals who planned those attacks, in order to prevent any future acts of international terrorism by such organizations. To date, the Executive Branch has offered no evidence that Iraq planned, aided or harbored Al Qaeda in connection with the September 11 attacks. The statute is clear that the authorization is limited to using force in connection with responding to nations, organizations and individuals connected with the September 11 attack, and did not authorize any broad based response to all forms of international terrorism. Indeed, the original bill that the President submitted for authorization was so broad as to plausibly authorize an attack on Iraq. Congress refused to enact the President's proposed bill; instead agreeing on the much narrower language currently contained in Section 2 of Pub. L. No. 107–40.

Nor does Pub. L. No. 102–1, authorizing the President to use force in 1991 to reverse Iraq's illegal invasion of Kuwait, provide any authorization for a current assault to remove Saddam Hussein. I understand the Administration's argument to be that since Iraq has not complied with the cease fire resolution 687 ending the 1991 war, Resolution 678 is revived, and thus both the Security Council's and Congress' authorization of force against Iraq pursuant to Resolution 678 are revived. This position is clearly erroneous and has been continuously rejected by the Security Council. Michael Ratner and I wrote a lengthy article published in the American Journal of International Law, 93 Am. J. Int'l Law 124 (1999), refuting this position which had been articulated by the Clinton Administration. To summarize our general view:

(1) Permanent cease fires such as occurred after the 1991 war generally terminate any U.N. authorization of force and such authorizations are not revived by any purported material breach by one side to the conflict.

(2) Article 34 of Resolution 687 is quite explicit that the Security Council, and not individual states, has the authority to determine whether Iraq has violated Resolution 687 and also what ''further steps,'' including presumably the use of force, to take in order to implement that Resolution.

(3) The history of Resolution 687 also supports the conclusion that it terminated the authorization of force contained in Resolution 678. After the suspension of hostilities in 1991, a provisional cease fire, Resolution 686 was adopted. Resolution 686 explicitly refers to Resolution 678 and ''recognizes'' that it ''remain[s] valid'' during the period required for Iraq to comply with the provisional cease fire's terms. The Security Council dropped that language in Resolution 687 which, unlike 686 does not recognize that Resolution 687 remains valid. Of all the detailed provisions in the cease-fire, only paragraph 4 guaranteeing the inviolability of the Iraq-Kuwait border contains language authorizing the use of force, and then only by the Security Council and not by individual states. That the Council decided to guarantee Kuwait's boundary by force if necessary—a guarantee that is central to both Article 2(4) of the Charter and the 1991 Persian Gulf war—excludes an interpretation of Resolution 687 as continuing the Resolution 687 authorization so as to allow individual nations to use force to rectify other, presumably less central violations. It would be illogical for Resolution 687 to require Security Council action to authorize force against threatened boundary violations, yet dispense with such action if Iraq violated another provision of the resolution.

[1] Jules Lobel, *Little Wars and the Constitution,* 50 MIAMI L. REV. 61 (1995). *See* letter dated October 14, 1994 from Professors Bruce Ackerman (Yale), Abram Chayes (Harvard), Lori Damrosch (Columbia), John Hart Ely (Stanford and Miami visiting), Gerald Gunther (Stanford), Louis Henkin (Columbia), Harold Hongju Koh (Yale), Philip B. Kurland (Chicago), Laurence H. Tribe (Harvard), and William Van Alystyne (Duke) reprinted 89 Am. J. Int'l L. 127, 130 (1995) (Constitution ''reserves to Congress alone the prerogative and duty to authorize initiation of hostilities''). (*See also* letter dated August 24, 1994 from same professors requesting that President Clinton seek and obtain Congress' express prior approval before launching a military invasion of Haiti.) *See also* Ely, *War and Responsibility, supra* at p. 1, 66–67; Louis Henkin, *Constitutionalism, Democracy and Foreign Affairs* 40 n.* (1990).

(4) The subsequent history of the efforts to enforce Resolution 687 demonstrates that only the Security Council could authorize the use of force to enforce that Resolution's terms. Resolution 1154 adopted on March 2, 1998 clarified the view of a majority of the Council that its explicit authorization was required to renew the use of force. As the Russian delegate noted, ''No one can ignore the resolution adopted today and attempt to act by bypassing the Security Council.'' Similarly, France stated that the resolution was designed ''to underscore the prerogatives of the Security Council in a way that excludes any question of automaticity . . . It is the Security Council that must evaluate the behavior of a country, if necessary to determine any possible violations, and to take the appropriate decisions.'' Other members of the Security Council concurred.

Moreover, even if the Administration is correct and as a matter of international law Resolution 678 is still in effect and constitutes a U.N. authorization of force, the congressional authorization of force in Pub. L. No. 102–1 is significantly narrower than Resolution 678. Prior Administrations have pointed out that Resolution 678 not only authorized force to enforce the exant Security Council Resolutions, but also to ''restore international peace and security in the area,'' which could conceivably be read to authorize removing Saddam Hussein from power. However, Pub. L. No. 102–1 contains no equivalent language. The congressional authorization only permits the President to use force pursuant to Resolution 678 ''in order to achieve implementation of Security Council Resolutions 600, 661, 662, 664, 665, 666, 667, 669, 670, 674 and 677. Since those resolutions have now all been implemented and are not now at issue (Resolution 687 is of course not mentioned in Pub. L. No. 102–1), that law can not by any conceivable argument be interpreted to authorize the use of force in the current situation.

The Administration will undoubtedly argue that it has been using force against Iraq for the past decade, enforcing the no fly zones, and occasionally bombing Iraq, such as the December 1998 four days of air strikes. Those uses of force in my opinion and the opinion of many experts, and majority of the Security Council have been illegal and unconstitutional. That Congress may have for political reasons acquiesced in or not strongly opposed such actions does not, in my opinion, make them constitutional.

Moreover, whatever the constitutional and international legality of those relatively minor uses of force, what the Administration now proposes is of a totally different character—both in magnitude and purpose. The scale, magnitude and significant of an invasion of Iraq to remove Saddam Hussein can not conceivably be covered by enforcing the no-fly zone and intermittent bombing precedent. What is clearly required in the present situation is an open congressional debate and new authorization of force.

I have been involved in constitutional War Powers issues for many years, both as a scholar and as a litagtor. As a litigator, I have been bipartisan in opposing presidential uses of force without congressional authority. I was lead counsel for 57 democratic legislators who challenged the elder President Bush's plan to go to war to drive Iraq from Kuwait without receiving congressional authorization. I was also lead counsel for a group of predominantly Republican members of Congress led by Congressman Campbell who challenged President Clinton's bombing of Yugoslavia in response to the Kosovo crisis. I have also written on issues involving constitutional war powers, with articles in the Harvard International Law Journal, University of Pennsylvania Law Review, University of Miami Law Review, American Journal of International Law and other journals.

I apologize for this rushed answer to your letter, but I wanted to get you a response before leaving on vacation. As you can see, I, like you, have a deep concern about these constitutional issues, and would be happy to assist you or other legislators in any manner to ensure that these questions are properly debated and voted on by Congress. I will be out of my office for several weeks, but will call in for messages and would be available for any consultation you might wish. My office number is 412–648–1375 and my FAX number is 412–648–2649.

Yours truly,

JULES LOBEL.

UNIVERSITY OF PITTSBURGH
SCHOOL OF LAW,
Pittsburgh, PA, October 3, 2002.

Hon. ROBERT BYRD,
U.S. Senate,
c/o Kathleen Hatfield.

DEAR SENATOR BYRD: Article 2(4) of the UN Charter prohibits preemptive attacks on other nations. The Charter only allows a nation to use force (1) in self-defense where it has either been attacked or faces eminent attack, or (2) when the Security Council authorizes such use of force. Article 6 of the U.S. Constitution makes treaty provisions such as Article 2(4) of the UN Charter part of the ''supreme law of the land.''

For Congress to authorize a preemptive attack on Iraq without imposing a condition that the UN Security Council first approve such force would therefore violate both the Charter and our own supreme law. The general assumption has been that Congress should not and cannot authorize aggressive war. Indeed, the prohibition on aggression is considered a fundamental, peremptory norm of international law and the D.C. Circuit Court of Appeals has suggested that Congress does not have the Constitutional authority to authorize actions that violate such norms. CUSCLIN v. Reagan, 859 F2d 929, 941 (D.C.Cir. 1988).

Therefore, if Congress wants to act legally, it must at minimum include in any authorization a requirement that the Security Council first approve the use of force before the President launches such attack. Including such a condition will also hopefully force Congress to discuss and debate the legality of preemptive strikes.

Sincerely,

JULES LOBEL,
Professor of Law.

NEW YORK UNIVERSITY
SCHOOL OF LAW,
New York, NY, September 4, 2002.

Senator ROBERT C. BYRD,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR BYRD: I regret that my absence, until yesterday, has delayed my response to your letter of July 22, 2002. The issues as to which you have asked me to comment are ones of great importance to the constitutional structure that underpins our freedoms as Americans. I have therefore drafted a bare-bones response for the sake of timeliness, but would be glad to provide further comment and sources as to any part of this submission.

(1) *The War Powers Resolution.* Because of its unsatisfactory drafting, the President's obligations towards Congress are quite limited. Under Section 5(b) the President has broad authority to conduct hostilities before Congress' approval is required. Since the provision of Section 5(c) has been rendered migratory by decision of the Supreme Court declaring the ''legislative veto'' essentially unconstitutional, the Act now has more force in validating, rather than invalidating, presidential war-making.

(2) *Pub. L. No. 107–40 (9/18/01).* This wildly overbroad authorization for presidential warmaking—more recently egregiously echoed in legislation authorizing presidential use of force in connection with Americans who may be surrendered to the International Criminal Court by foreign governments—allows the President broad latitude to use force against any nation ''he determines'' to have ''planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.'' And it even specifies that this broad delegation constitutes authorization under Section 5(b) of the War Powers Resolution. ''He determines'' seems to convey unlimited discretion It can be argued, however, that such ''he determines'' language has been defined by courts in reviewing other examples of delegates executive/administrative authority as implying that the authority must be exercised reasonably and justifiably. It can be further argued, accordingly, that the President must justify the reasonableness of his determination to the Congress. It is not, however, a very powerful argument and, in the end, it still leaves broad discretion with the President. It can also be argued that the delegation was meant to be tied to the events of September 11 and that the President's authority therefore does not extend to the use of force when there is no demonstrable connection to those events.

(3) *Pub. L. No. 102–1 (1/14/91).* This provision is interpreted by the Executive as authorizing the use of force against Iraq for an indefinite period of time. Congress, however, wisely tied the authorization to the use of force ''pursuant to United Nations Security Council Resolution 678 (1990).'' The force of argument that this authorization continues to be in effect therefore depends on whether the Security Council Resolution 678 remains effective. That question compels consideration of international law: particularly, Security Council Resolution 687 of 3 April 1991, which established a cease-fire but imposed on Iraq a weapons monitoring regime as to which it is now clearly in violation. It is unclear from the text of Resolution 687 whether this meant to continue, suspend, or terminate Resolution 678. Two considerations are relevant. *One* is that para. 33 of S/Res/687 declares that, on the acceptance of the conditions set by the Council, ''a formal ceasefire is effective'' between Iraq and its opponents and that (para. 34) the council declares itself ''to remain seized of the matter'' and retains for itself the power ''to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area.'' This does not seem to authorize states to use force whenever they deem Resolution 687 to have been violated, but, rather, makes such action conditional on specific new Security Council authorization. (Note that, even were such new authorization forthcoming, it would not automatically revive the authority Congress gave the President under Pub. L. No. 102–1.) *The other consideration* is that the Council has never passed a resolution objecting to the many instances in which the U.S. and its allies have acted on their own (for example, by establishing and enforcing ''no-fly zones''). This omission by the Security Council is better understood, however, in terms of the realities of the ''veto'' in the Council, and its deterrent effect, than as evidence of Council acquiescence in such use of force.

In sum:

(1) The war Powers Resolution does not help Congress, and this may further illustrate the need for its repeal.

(2) Congress gave away far too much of its power in enacting Pub. L. No. 107–40 and

should avoid such extremely broad authorizations—*in futuro* and extending to uncertain circumstances—of war-making authority. Nevertheless, it can be argued that the authority must be read to include a ''reasonably justified'' standard for its exercise.

(3) Pub. L. No. 102–1 does not authorize the use of force against Iraq because it is limited to war-making under the aegis of Security Council Resolution 678, which was suspended by Security Council Resolution 687.

I hope this will be of some assistance. With good wishes,

Cordially yours,

THOMAS M. FRANCK,
Professor of Law Emeritus.

[From the Los Angeles Times, May 31, 2002]

BUSH MUST AVOID SHORTCUTS ON ROAD TO WAR

(By Bruce Ackerman)

President Bush has been busy reassuring Europeans that he ''has no war plans'' on his desk for an invasion of Iraq. Such statements can only evoke concern at home. Even when the president receives his plans from the military, he lacks the authority to execute them. The Constitution makes him commander in chief, but only Congress can declare war.

We have been here before.

Two days after the congressional elections of 1990, the first President Bush ordered a massive increase of American troops for an offensive against Iraq. Dick Cheney, then Defense secretary, publicly announced that the president did not ''require any additional authorization from the Congress before committing U.S. forces to achieve our objectives.''

Fifty-four members of Congress responded by going to court and demanding an injunction against military action until both houses gave their explicit approval. The administration was unimpressed by the lawsuit. It told the court to stay out and treat the matter as a ''political question.''

The case speedily came to trial in federal district court, where Judge Harold Greene roundly rejected the president's claims.

While handing Congress a victory on the merits, Greene was more cautious when it came to a remedy. In his view, the time was not yet ripe for decisive judicial intervention. As far as he could tell, a peaceful settlement with Iraq was still possible, and it wasn't clear whether a majority of Congress would oppose the war if negotiations broke down. So why intervene when the whole issue might dissolve and make judicial intrusion unnecessary?

The next move was up to the elder President Bush: He might press on unilaterally and challenge Congress to return to Greene's court for an injunction once war was clearly in the cards. Or he could call a halt to the escalating institutional battle and ask both houses explicitly to authorize the war.

This was an easy choice for the public: Polls showed that more than 70% favored explicit congressional authorization.

After mulling over the matter, the president bowed to the combination of law and public opinion. In January 1991, he dropped his unilateralist claim and formally requested both houses to approve the attack against Saddam Hussein.

The first shot was fired only after Congress gave its consent.

The argument for legislative authorization is more compelling the second time around. In 1991, the country was responding to a clear act of aggression. Nobody could doubt that Iraq had invaded Kuwait. And a lengthy congressional debate might have cost American lives because Hussein's soldiers would have had more time to prepare for the invasion.

The second President Bush can't take advantage of either extenuating factor.

Rather than pointing to a clear boundary-crossing, he will be offering circumstantial evidence of Iraq's atomic and biological weapons program. If this evidence is truly persuasive, he should have no trouble convincing a majority of Congress. But if the president attempts to skirt Congress, it will cast doubt on whether his claims can survive a fair test in the court of public opinion.

Nor is time of the essence. We aren't dealing with a situation where Iraqi troops can dig in while Congress dithers.

A second American invasion would, at most, prevent a future threat to national security. Nobody seriously suggests that a debate of a week or a month would cause permanent damage.

There is no good reason for Bush to deviate from the precedent set by his father in 1991.

But aren't we already embarked on a ''war against terrorism''? In invading Iraq, isn't the president simply opening another front in an ongoing struggle? This might serve as a TV sound bite, but it is nonsense as a matter of law.

Up until now, Congress authorized ''necessary and appropriate force'' only against those who ''aided the terrorist attacks that occurred on Sept. 11.'' The Bush administration has failed to implicate Hussein in those attacks. If a second invasion of Iraq is justified, it is because of a future threat.

The real question is how the administration meets its constitutional responsibilities. The first President Bush did not abandon unilateralism without a fight. Will his son also escalate the institutional confrontation at home as he accelerates war preparations abroad?

This is no time for constitutional brinkmanship. The president should take the first opportunity to say that he respects the constitutional precedents established during the Gulf War. It will be tough enough to confront the prospect of a major war soberly without attempting an end run around the people's representatives.

CENTER FOR POLITICS,
Charlottesville, VA, August 28, 2002.

Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, DC.

DEAR SENATOR BYRD: Thank you for requesting my views on the U.S. constitutional and political questions surrounding presidential war-making authority, especially as they apply to the current situation with Iraq. I am happy to offer them, for whatever they may be worth, and I will attempt to do so in un-professorial fashion, by being relatively brief.

It is clear that the Founders fully trusted neither the Executive nor the Legislature with war powers, and so they divided them—making the President the commander-in-chief and giving to the Congress the right to declare war. A reasonable inference, then, is that the Founders expected the two elective branches to share war powers, and to check and balance one another in this life-and-death arena, as in so many other areas of governmental authority. Neither the 20th Century history of executive usurpation of congressional war powers, nor the various interpretations and applications of the War Powers Resolution since 1973, can change this fundamental truth. Simply put, the executive usurpation in the last century was constitutionally flawed. Moreover, the unquestioned legislative goal of the War Powers Resolution was to return to the Founders' original intent—that the Congress should be thoroughly involved, and not just informed or 'consulted' after the fact, in this nation's acts of war. Unilateral presidential action in Iraq based on S.J.Res.23 (enacted after September 11, 2001) or the Congress' ''Iraq Resolution'' of 1991 would be a real stretch, a result-oriented rationalization that would be unwise and constitutionally suspect.

Given the constitutional imperatives of war-making, it is difficult to understand how any President could argue that Congress does not have a co-equal role to play in an act of war by this country against another sovereign state. This is especially true in a case such as Iraq, where immediate attack is not required, and where planning and build-up for war will take many weeks. Let's note, too, that these preparations will hardly be a secret, and that they will be reported in some detail to the American people, and indeed the entire world, including the enemy state.

My own academic specially is politics, and here the case for full congressional consultation is overwhelming. A President who undertakes a risky foreign war without the expressed support of the American people is courting disaster. Since (blessedly) we do not have any process for national referendum, and since our system of government is representative democracy, the logical institution to provide both careful, elite review and broad, popular mandate for any proposed war is the Congress. Presidents have often unwisely tried to avoid this step, preferring complete executive branch control. But surely a lingering, invaluable lesson from the United States' tragic involvement in Vietnam is the necessity to bring along the congress, and through it, the American people, in a united commitment to succeed whenever the lives of our soldiers and our national treasure are on the line.

While initially reluctant to seek congressional authorization for the Persian Gulf War in 1990–91, President George H.W. Bush correctly asked for and received the support of the Congress after a healthy, high-toned, and memorable debate. At the time, no one knew for sure that the war with Saddam Hussein could be won so quickly and easily. If the fortunes of war had not been so favorable to our country, and the Persian gulf conflict had taken many months to win, President Bush would have been especially grateful for that congressional vote to proceed. It would have provided a firm basis for sustaining support and prosecuting the war until victory was complete. So it will be in 2002–03 in any new war with Iraq. Saddam Hussein may or may not fall quickly, and the post-war turmoil may or may not engulf the Middle East and entangle the United States for months or years. But come what may, a congressional vote of authorization would provide President George W. Bush with the political support to ask for patience and sacrifice, should they be needed, over a lengthy period of time. Our elected leaders in both representatives branches would have given proper constitutional consent, and as a nation, we would all be in it together, to do what it take to win for as long as it takes to win.

And what if the Congress, in its wisdom, should choose not to authorize a war with Iraq at this time? Then our political system would have worked equally well. For if one or both houses of Congress should choose to say no, it would mean that Congress sees that a war with Iraq has consequences too serious to risk, or that such a war would not have the requisite support of the American people. With the failure of Vietnam as well as the success of the Persian Gulf War in mind, the Congress might decide that this war could be closer to the former than the later. And should Congress so decide, and make this case convincingly to the citizenry, then surely the nation would be grateful

since one Vietnam is enough for all of American history.

Senator, I hope this analysis has been of some assistance to you. Please let me know if I can help in any other way. And please also accept my warm wishes and genuine admiration for your work on our behalf.

Yours sincerely,

LARRY J. SABATO,
Director, U. VA. Center for Politics & University Professor of Politics.

Mrs. FEINSTEIN. Mr. President, I rise to address the fact that by the end of the year more than 2 million Americans will have exhausted their unemployment insurance.

There is no more pressing issue facing our Nation's workforce, and yet Congress has chosen to put partisanship ahead of what nearly everyone agrees is smart policy.

By passing widely divergent bills, the House and the Senate have virtually ensured that on December 28 of this year thousands of workers will be in the impossible position of trying to feed, clothe, and house their families with no work and no benefits.

I strongly support the Emergency Unemployment Compensation Act of 2002, a bipartisan compromise bill which was introduced in the Senate in late September.

This bill, introduced by Senators Wellstone, CLINTON, and KENNEDY, with the support of 33 Senators, extends unemployment benefits nationwide for 13 weeks, and provides 20 weeks of extended benefits for California and other high unemployment States.

It provides crucial temporary assistance to those who have been hardest hit by the current economic downturn, and provides them a chance to support themselves and their families while they look for work.

Although the compromise bill passed by the Senate does not include the 20-week extension that is vital to States such as California, which suffer from a higher unemployment rate than the national average, it provides a meaningful extension that could help American families, especially during the Christmas holiday.

Let me stress that this bill is the product of bipartisan compromise, and is supported by Senator NICKLES and other Republicans who have been vocal on this issue.

At the moment, millions of Americans have lost their job and are unable to find another, despite their efforts to reenter the labor force. The number of Americans unable to find employment has increased from 5.7 million at the end of 2000 to more than 8.2 million today.

Even more disturbing, due to continued economic weakness, the number of Americans who have been out of work for over 6 months has almost doubled from 900,000 to 1.5 million in the past year.

Between May and July of this year, approximately 900,000 workers exhausted the benefits made available through the extension that was passed in March.

By the end of this year, that number will increase to 2.1 million individuals. Those are the individuals at greatest risk for falling through the social safety net we have provided for them.

This illustrates the critical need for an extension of unemployment insurance that makes sense.

When the national economy was booming 2 years ago, California was particularly blessed. California's economy grew at double-digit rates, and California become the fifth-largest economy in the world.

Billions of dollars of investment flowed into our State, and thousands of talented workers moved to California to take advantages of opportunities in Silicon Valley and other growth engines of the New Economy. Now that picture is dramatically different.

A recent report by a group of economists at UCLA predicted that California's unemployment rate will rise to 6.5 percent next year, and that nonfarm jobs in the San Francisco Bay area contracted by an annual rate of 4.6 percent between April and June of this year. After dropping to a decade-long low of 4.7 percent in December of 2000, the unemployment rate is back up to 6.4 percent as of the end of October. The number of Californians receiving unemployment benefits has increased to 470,000 from 430,000 1 year ago.

During this period of great economic hardship, we have a duty to give people the chance to get back onto their feet. This is an obligation that we have met in the past, most recently when faced with an economic downturn during the first Bush administration.

The Senate voted in 1991 to extend temporary unemployment insurance on five separate occasions. Each time such extensions were approved by overwhelming bipartisan majorities.

Therefore, I call on the House and Senate leadership to ensure that an extension of unemployment benefits for a full 13 weeks be the first item considered during the 108th Congress. Although that will not prevent the expiration of benefits for many Americans, it will provide a fairly rapid restoration of benefits to those who will be cut off at the end of the year.

With that goal in mind, I have sent a letter to Speaker HASTERT and Senator LOTT with the signatures of more than 40 of my colleagues in the Senate, asking them to bring up an extension of unemployment insurance immediately upon reconvening next year.

Let me be clear: by ducking this issue we seem to be hoping that this problem will disappear.

It will not, and if we do not address it now, we will not be living up to our obligation to the families of this Nation.

RECOGNIZING STAFF INVOLVED IN HOMELAND SECURITY

Mr. LOTT. Mr. President, putting the homeland security bill together has been a difficult almost herculean task. Many Senators have played important roles in this legislation, but it could not have been done without the contributions of our staff. Without the aid of these individuals, the work of this institution would be impossible to accomplish. I would like to recognize the hard work and dedication of those staff members whose contributions to this legislation have been critical and without whom we would not have been able to pass this bill.

On the Democrat side of the aisle, I want to recognize the contributions of Senator LIEBERMAN'S staff—especially his staff director, Joyce Rechtschaffen, as well as Laurie Rubenstein, Mike Alexander, Kiersten Coon, Holly Idelson, Kevin Landy, Larry Novey, and Susan Propper. I would also like to acknowledge the contributions of Sarah Walter of Senator BREAUX'S staff, David Culver of Senator BEN NELSON'S staff, and Alex Albert of Senator MILLER'S staff.

On the Republican side, I would especially like to thank Richard Hertling, Senator THOMPSON'S Staff Director who, along with Rohit Kumar of my staff, was integral in the drafting of the bill that we are sending to the President. I would also like to compliment the rest of Senator THOMPSON'S staff—Libby Wood Jarvis, Ellen Brown, Bill Outhier, Mason Alinger, Alison Bean, John Daggett, Johanna Hardy, Stephanie Henning, Morgan Muchnick, Jayson Roehl, Jana Sinclair, Elizabeth VanDersarl and Allen Lomax—all of whom played an important role in crafting this legislation. Senator GRAMM'S Legislative Director, Mike Solon, and David Morgenstern of Senator CHAFEE'S staff also played very important roles in the process.

Finally, I would like to acknowledge the efforts of those individuals from the other body and from the White House, all of whom dedicated significant time and effort to this bill. From the House of Representatives, the efforts of the House Select Committee staff—in particular Hugh Halpern, Paul Morrell and especially Margaret Peterlin—were absolutely essential to drafting the compromise language.

From the White House, I would like to thank Ziad Ojakli, Christine Ciconne, Heather Wingate of the Legislative Affairs Office, Wendy Grubbs, Michael Allen, Richard Falkenrath, Sally Canfield and especially Lucy Clark from Governor Ridge's Office of Homeland Security, Christine Burgeson from the Office of Management and Budget, Brad Berenson from the White House Counsel's office, and Joel Kaplan from Chief of Staff Andy Card's office for their assistance in putting together this legislation. Without their efforts and cooperation, this bill could not have come to pass.

These staff members have worked diligently and largely in anonymity. Given all that they have done in service to their country, I think it is appropriate to recognize their work publicly, so that the rest of the country knows,