

fair-minded individuals with appropriate judicial temperament and who are committed to upholding the Constitution and following precedent. When the President sends judicial candidates who embody these principles, we have tried to move quickly. When he sends controversial nominees whose records demonstrate that they lack these qualities and whose records are lacking, we will necessarily take more time to evaluate their merits.

Mr. HATCH. Madam President, I rise today in support of the confirmation of Terrence McVerry, who has been nominated to serve as a U.S. District Judge for the Western District of Pennsylvania.

Terrence McVerry has the breadth of experience and accomplishment we look for in a Federal judge. After graduating from law school, Mr. McVerry served in the U.S. Army Reserves and the Pennsylvania Air National Guard. He then went to work as an assistant district attorney for Allegheny County, prosecuting hundreds of trials with an emphasis in major felonies and homicides.

Mr. McVerry also has 17 years of civil litigation experience representing individuals in a variety of matters including personal injury, real estate, contracts, family matters, estate planning, and small businesses and corporations.

Mr. McVerry has been an able legislator, winning election to the Pennsylvania House of Representatives in 1979 and serving there for 21 years. In 1998 Governor Tom Ridge appointed him to fill a judicial vacancy on the Court of Common Pleas of Allegheny County in the Family Division. Currently Mr. McVerry is the solicitor of Allegheny County, acting as the chief legal officer and director of a governmental law department comprised of 36 attorneys.

I thank my colleagues for joining me in my unqualified support for Mr. McVerry.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 1:01 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

#### HOMELAND SECURITY ACT OF 2002—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senate from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that I be allowed to proceed under Senator LIEBERMAN's time.

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

#### TERRORISM INSURANCE

Mr. REID. Mr. President, I have to believe that the President is not getting the right information from his staff; otherwise, knowing him, I cannot believe he would say some of the things he has said recently.

I was running yesterday morning, and on Public Radio I heard a preview of the speech the President was going to give before a union in Pennsylvania. And I thought they must have made a mistake. Then, later in the day, I heard him complete that speech, and he went ahead just as they had said on Public Radio.

As we consider homeland security and the measures we should take to defend America, I think it is important we talk about terrorism insurance. That is the issue I want to talk about. I believe the President has not received the proper information from his staff.

Following the attacks on the World Trade Center and the Pentagon about a year ago, many American businesses have had trouble purchasing affordable insurance covering acts of terrorism.

As a consequence, many construction projects and real estate transactions have been delayed, interrupted, and in some cases canceled. We are talking about billions of dollars worth of projects that have been stalled, some terminated, solely because of the lack of being able to purchase terrorism insurance.

These problems cost many American workers their jobs and prevent businesses from being as productive as they could be. Clearly, the lack of affordable terrorism insurance has had a harmful effect on our Nation's already troubled economy.

I am glad we are back from our break and the President is back from his vacation. However, as I have indicated, yesterday, the President made some statements relating to terrorism insurance, about the need for Congress to move forward on terrorism insurance, that simply were without any fact.

As millions of students across the country go back to school, I want them to understand that they must speak the truth. I repeat, I do not think the President said what he said yesterday based upon full knowledge of all the information.

The truth, Mr. President, is Senate Democrats—because I have been here offering the unanimous consent request for months—have been leading the effort to pass an effective terrorism insurance bill—and we started on this last year—while Republicans have delayed and attempted to thwart this important legislation time after time. The President should know that. The leadership in the Congress of his party has not allowed us to go forward on this legislation.

One of the statements he made before the union is: I am for hard hats, not trial lawyers.

This is terrorism insurance. We should move it forward. I am confident everyone can see through these state-

ments the President made as being without fact.

I want to remind him and the people who give him advice—give him good information, good background information so he can speak with the full knowledge of the facts.

We are eager to pass terrorism insurance. We have done everything within our power to do that. This would help workers, businesses, and the Nation's economy.

Shortly after the terrorist attacks last year, our colleagues—Senators DODD, SARBANES, and SCHUMER—developed a strong bill to help businesses get the affordable terrorism insurance they badly need.

When we attempted to move this bill last December, the minority voiced no fundamental disagreement with the bill but argued over the number of amendments to be offered. This was done in an effort to prevent us from moving forward on this legislation. So we could not do it in December. We came right back and started on it. After having had many private attempts to get this legislation moving, we decided to go public and try to move it from the floor, right from where I stand.

We tried offering in early spring unanimous consent agreements to take up the terrorism insurance legislation. Again, there was no objection to the base text or that the Dodd-Sarbanes-Schumer bill should be the vehicle we would bring to the floor. They wanted some amendments. We wanted to treat this as any other legislation. They said let us agree on the number of amendments. Whatever number we came up with wasn't appropriate. We could not move it. Finally, they simply disagreed with bringing up the bill at all.

It is the right of the majority leader to decide which bills are brought to the floor. If the minority is opposed, they have the right to offer amendments and attempt to modify the text of the bill. We have offered to bring the bill up with amendments on each side so everyone could have the opportunity to make changes.

Nevertheless, the minority continued to object and further prevented us from passing the terrorism insurance legislation.

In April, the importance of the terrorism insurance legislation was enunciated by Secretary O'Neill in his testimony before the Appropriations Committee that the lack of terrorism insurance could cost America 1 percent of the GDP because major projects would not be able to get financing.

Finally, we were able to get an agreement that we could bring the bill to the floor. We passed the legislation. And then came weeks and weeks of more stalling by the minority. We could not get agreement on appointing conferees. We attempted and attempted and attempted. First, they were upset because the ratio was 3 to 2, which is fairly standard. They said they wanted 4 to 3. So we came back

and said OK, and they still would not agree.

Finally, we were able to get agreement on the appointment of conferees. But now nothing is happening in the conference. We cannot do that alone. So I hope the record is clear. I know we refer to "the people downtown"—that is, the government representatives, the lobbyists who are concerned about this issue, the real estate and hotel owners, and these special interest groups. They know how we have tried to move this legislation. I only hope the people who have lost their jobs and are unable to move forward—these people in Pennsylvania yesterday who were told we are holding this up—understand that simply is not the truth.

So I certainly hope this legislation can be completed and we can have a bill sent to the President. It is the right thing to do. The legislation is important, and I hope we can do it sooner rather than later.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, I yield 15 minutes of my time now to the Senator from Illinois who, I might say parenthetically, has been an extraordinarily thoughtful, constructive participant in the Senate Governmental Affairs Committee's consideration of the question of homeland security and, in that sense, has contributed mightily to the proposal we will put before the Chamber tonight. I am glad to yield 15 minutes to Senator DURBIN.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I thank Chairman LIEBERMAN for his leadership on the Governmental Affairs Committee. I think the record demonstrates that before the President called for the creation of a Department of Homeland Security, our committee, the Governmental Affairs Committee of the Senate, under Senator LIEBERMAN's leadership, proposed a law to create such a Department.

At the time, it is interesting because it was on a partisan roll call, if I remember correctly, nine Democrats for it, seven Republicans against it. We argued that a question of this magnitude, a challenge of this gravity, required a separate Department at that moment in time. Neither the President nor his loyal followers in the Senate were prepared to join us in that effort.

So I salute Senator LIEBERMAN for his leadership, and I am happy now that we have reached the point where we are speaking again, as we should when it comes to our Nation's defense,

in a bipartisan manner. I hope that as we proceed to the debate on this bill, we can gather together again that same bipartisan force.

There is nothing that says Congress or the Senate have to agree on everything and, frankly, if we did, it would probably betray the principles and values of this Nation. But when it comes to our national security and defense, particularly the creation of a Department of this magnitude, I think it is all well and good that when the debate ends, we do try to find some common ground.

Our Government simply has to change and adapt to the challenge of international terrorism. A reorganization of this magnitude is not going to be simple—it is going to take some time—but this Congress is up to the task. Throughout our history, from 1789 when the first Congress created the first executive branch Departments of State, War, and Treasury, to 1988 when the latest Department, the Department of Veterans Affairs, was created, Congress has worked to make sure the Government was organized to do the job the American people asked of it.

Protecting our Nation's people is our highest priority. On March 15, 2001, almost 6 months before the attack on September 11, the U.S. Commission on National Security/21st Century, known by the shorthand name of the Hart-Rudman Commission, named after its co-chairmen the distinguished former Senators Gary Hart and Warren Rudman, released a report entitled "Road Map For National Security: An Imperative For Change." The Commission was, unfortunately, prescient in seeing the vulnerability of the United States to terrorism. The No. 1 recommendation of the Hart-Rudman Commission was to create a Department of Homeland Security.

It is worth quoting for the record some of the report that came out of the Commission. It says, the combination of unconventional weapons proliferation with the persistence of international terrorism will end the relative invulnerability of the U.S. homeland to catastrophic attack.

These words were written 6 months before September 11. They went on in their report to recommend the creation of an independent national homeland security agency, and they suggested there were some agencies of Government which naturally would come under the roof and under the authority of this new Department and quite effectively, or at least more effectively, defend the United States.

The blueprint they laid out was really the basis for this bill we have before us, the Senate version, the Governmental Affairs version, from Senator LIEBERMAN. The backbone of the new Department will be FEMA, the Federal Emergency Management Agency, along with the Departments guarding our borders and our perimeter. This new Department everyone sees as a way to protect our country more robustly.

Some have questioned, though, how a new Department and how reorganizing Government will really make us any safer. Right now there are more than 45 agencies in the Federal Government with some responsibility for homeland security. If we look at it, it is just too diffuse. It cannot be focused. It cannot be coordinated. In the words of my friend and former House colleague, Gov. Tom Ridge, we are going to, frankly, not have the force multipliers we need that organization and coordination will bring.

Some of my colleagues have charged we are moving too quickly. Well, I happen to agree with the premise that this race to enact this legislation by September 11 of this year, on the 1-year anniversary of that terrible disaster, was precipitous. It would have been a miracle if we had been able to create a bill that quickly which would have really met the task. It is better for us to take the additional time to do it right. To meet some self-imposed deadline or some deadline imposed by the press or our critics does not make a lot of sense when we are talking about a Department that is going to be facing the responsibility of protecting America for decades to come.

As a member of the committee, I want to report to our colleagues that I think our committee has done its job. This does not mean we should not debate the issue and deliberate on some alternatives and some modifications. What we have before us is an effort, backed by bipartisan work for many years under both Republican and Democrat chairmen. This committee has held 18 hearings since last September 11 setting up this new Department. It is a committee that has held a series of hearings over the last 4 or 5 years on the issues that are involved.

I remind my colleagues that this extensive body of work of this committee and its chairman allowed our committee to report out a bill on May 22. Once the President decided he wanted a similar Department, we tried to coordinate his intentions with our own. Realizing that all wisdom does not reside in one branch of Government or the other, we have listened to the President's suggestions. I am hopeful he will be open to our own.

One of the things I included in this as an element that was of particular personal interest related to the whole question of information technology. The proposal to restructure 28 agencies into a new, unified Homeland Security Department poses a complex challenge to integrate the system's infrastructure of our information technology to support the new Department's mission.

Let me get away from these high falutin' words, high sounding words, and get back to the real world where I live, because I am not part of this computer generation. I struggle with my own computers and e-mail to try to be up to speed. In the amendment that I adopted, what we are really saying to the Office of Management and Budget

is: We want you to have a special person, a special group, assigned the responsibility to coordinate the architecture of the computers that are supposed to be cooperating and working together in all of the different intelligence agencies.

I am sorry to report to the Senate and to the people following this debate that that does not exist today. In fact, it has been a very low priority. If we look at the sorry state of affairs of computers at agencies such as the Federal Bureau of Investigation, we can certainly understand the need for this amendment. Currently, each of the agencies we expect to consolidate has its own separate information technology budget and program—the Coast Guard, Customs, FEMA, INS, Secret Service, Transportation Security Administration, and others. Each one has a unique system that does not necessarily have the capacity to communicate or coordinate these activities. Frankly, is that not what this debate is all about, so that all the agencies of the Federal Government will coordinate their resources, their authority, and their wisdom into one unified effort to create the force multiplier that Governor Ridge mentioned?

Because these divergent systems need to be linked, it is important to ask key questions now to ensure this new Department will help the agencies brought together and others outside to coordinate their communication and share information. It is equally important to establish appropriate links between the Homeland Security Department and other agencies, such as the CIA, the National Security Agency, the Department of Defense, the FBI, the State Department, and State and local officials, which may not be embraced under the Homeland Security Department's organizational umbrella.

Given the current state of affairs in the Federal information technology systems reflected in incomprehensible delays in meeting congressional mandates, I think this is long overdue. I will give two illustrations of why this is timely.

Six years ago, Congress mandated the Customs Department and INS to establish a database to record those exiting the United States with visitor's visas. Those coming into the United States in many instances need visas to be in the United States, and we thought we should keep track of those who are leaving so we will know the net number of visa holders in the United States, which can range in the tens of millions at any given time.

Six years ago, Congress said to the INS: Keep track of people leaving with a visa. Six years later, it is still not done. It has not been accomplished. The inspector general at the Department of Justice tells us it is years away.

So when Attorney General Ashcroft said, to make America safer, we are going to take the fingerprints and photographs of all people coming into the

United States on a visa, I am sure people around America were nodding their heads saying, I guess that is necessary; it is certainly reasonable. Well, it is technologically impossible today to do it. We do not have the computer capability to keep track of people leaving the United States with a visa, let alone the millions coming into the United States on visas.

So for the Attorney General to make that suggestion is to say that he is going to go drill for oil on the Moon. It is not going to happen—not until we come a long way from where we are today.

We also said, incidentally, to the FBI and the Immigration and Naturalization Service: We notice that they both collect fingerprints. Can they merge their databases so that law enforcement agencies across the Federal Government, across the Nation, around the world, will have access to a common database of fingerprints collected by the United States? We asked them to do that 3 years ago. It still has not been done.

So when it comes to information technology, do not delude yourself into believing we are where we ought to be. We are not. The creation of this Department and the amendment which Senator LIEBERMAN and others were happy to accept and said nice things about, I hope will move forward in achieving that goal.

The enterprise architecture and resulting systems must be designed for interoperability between many different agencies. I hope we get this achieved quickly.

I have had a great deal of frustration, even anger, over the lack of progress we have made since September 11. To have the new person in charge of information technology from the FBI testify before the Judiciary Committee saying it will be 2 years before the FBI is up to speed with their computers is totally unacceptable. Members should not stand for that one second. To think one can go to any computer store in any major city in America and buy computers with better capability than the computers of the Federal Bureau of Investigation is shameful. That exists today; it should change. This bill will be part of the change.

Also, I raise another issue briefly. After the events of September 11, we heard from a number of people—Governor Ridge, Secretary Thompson of the Department of Health and Human Services—about concern for our Nation's food supply and its vulnerability to attack. We have to be mindful and sensitive. I thank Senator LIEBERMAN for including my language on food safety and security in this legislation, directing the Secretary of the Department of Homeland Security to contract with the National Academy of Sciences to conduct a detailed study to review all Federal statutes and regulations affecting the safety and security of the food supply, as well as the current organizational structure of food safety

oversight to figure out if we can do it better. I think we can. I believed that for a long time. I pushed for better coordination, better definition, better objectives for food safety. Now, this is a different level. It is not a question of food that can be contaminated by natural causes, but food that could be jeopardized and contaminated by enemies of the United States. It is part of the same consideration but raises it to a much higher level.

I close by thanking Senator LIEBERMAN for his leadership on this issue. This reorganization is complicated. Although we are a great deliberative body, we have to roll up our sleeves and deal with it. We approach the anniversary of September 11 and know further attacks are not only possible, but in many instances our open society invites them. We do not have the luxury of waiting. If there were another attack since last September 11, this bill would have passed out of here a lot sooner. Now that we have the time to do it, let's do it and do it right.

I thank Senator LIEBERMAN for his leadership, and I yield the floor.

Mr. LIEBERMAN. Mr. President, I thank Senator DURBIN for his statement and for the contributions he made substantively to the proposal and for his eloquent advocacy for the urgent necessity to get together and create a Department of Homeland Security.

I yield the floor.

The PRESIDING OFFICER. Who yields time to the Senator from Maine?

Ms. COLLINS. Mr. President, I yield myself as much time as I may consume from the time of Senator THOMPSON.

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

Ms. COLLINS. Mr. President, I rise to discuss the legislation before the Senate that will result in the most significant reorganization of the executive branch in more than 50 years. The creation of a Cabinet-level Department of Homeland Security is of fundamental importance to our national security. I believe it is one of the most important pieces of legislation we will consider during this Congress.

In the year since the terrorist attacks on our Nation, much has been done to make our country more secure. Congress has approved billions of dollars to secure our borders, protect critical infrastructure, train and equip first responders, and better detect and respond to a bioterrorism attack. Our brave men and women in uniform have been fighting valiantly in Afghanistan and have succeeded in many of the goals in the war against terrorism.

The creation of the Department of Homeland Security is another important step in our efforts to secure our Nation against another terrorist attack. This sweeping reorganization dwarfs any corporate merger that you can think of. It involves some 200,000 employees and nearly \$40 billion in budget. The task before the Senate is truly daunting, and it is important we get the job done right.

Currently, as many as 100 Federal agencies are responsible for homeland security. But not one of them has homeland security as its principal mission. That is the problem with our current organizational structure. With that many entities responsible, nobody is accountable and turf battles and bureaucratic disputes are virtually inevitable.

If we are to overcome these problems and create a national security structure that can defend our Nation, we must unite the current patchwork of agencies into a single new Department of Homeland Security. This agency would work to secure our borders, help protect our ports, our transportation sector, and protect our critical infrastructure. It would synthesize and analyze homeland security intelligence from multiple sources, thus lessening the possibility of intelligence breakdowns or lack of communication. Furthermore, the new domestic security structure would coordinate Federal communications regarding threats and preparedness with State and local governments, as well as with the private sector.

Our efforts to create a new Department of Homeland Security will help to remedy many of the current weaknesses of the past and thus help to protect us against future terrorist attacks.

As a member of the Senate Governmental Affairs Committee, which held extensive hearings on the reorganization legislation, I have had the opportunity to consider a multitude of ideas and concepts regarding the creation of the new Department. We heard excellent testimony from Governor Ridge, from the Directors of the FBI and the CIA, and from a host of other experts. They all shed light on the problems that are created by our current disorganization in the area of homeland security. They all shed light on the problems that have impaired our ability to defend our homeland and on the threats that we now face and inevitably will face in the future.

During the committee's consideration of this bill, I expressed concerns that in our effort to create a new Department, we must be careful to protect the traditional missions, the very important missions of the agencies that are being assembled into this giant new department. In particular, I believe the Coast Guard's traditional functions, such as search and rescue and marine resource protection, must be protected and maintained.

Since the tragic events of September 11, the Coast Guard's focus has shifted dramatically to homeland security. I talked with Coast Guard officers in Portland, ME, who told me the amount of time they are now spending on port security operations and inspecting foreign vessels coming into the harbor in Portland. I have no doubt these are very important missions and that the Coast Guard plays an essential role in homeland security. And I believe it

should play a leading role in the new Department. However, we know the Coast Guard cannot continue to focus on homeland security missions without jeopardizing its traditional focus. I am concerned that if the current resource allocation is maintained and the Coast Guard continues to perform these new homeland security responsibilities, its traditional missions will be sacrificed.

The President's budget goes a long way to try to remedy this problem by allocating significant new funds for the Coast Guard. But we also need to make sure the organizational structure in the new Department also safeguards the Coast Guard's traditional mission.

For example, prior to September 11, port security missions accounted for approximately 2 percent of the Coast Guard's resources. Immediately following the terrorist attacks, the Coast Guard deployed 59 percent of its resources to port security and safety missions. As a result, many of the aircraft and vessels traditionally used for search and rescue were far removed from their optimal locations for that function. Even after the immediate impact of the September 11 attacks subsided, its impact on the resources of the Coast Guard remained. Indeed, from April through June of this year, the Coast Guard devoted 9 percent fewer hours on search and rescue missions than it did in the year before.

Because of the Coast Guard's importance to coastal areas throughout our Nation, any reduction in its traditional functions is cause for great concern. Those of us who represent coastal States know how absolutely vital the mission of the Coast Guard is. Last year alone, the Coast Guard performed over 39,000 search and rescue missions and saved more than 4,000 lives. On a typical day, the Coast Guard interdicts and rescues 14 illegal immigrants, inspects and repairs 135 buoys, helps over 2,500 commercial ships navigate in and out of U.S. ports, and saves 10 lives. That is on a typical day. In short, the Coast Guard's traditional missions are of vital importance and they simply must be preserved.

Let me take a moment to talk about the Coast Guard's impact and its importance in my home State of Maine. Each year, the Coast Guard performs about 300 search and rescue missions in my State. These missions are literally a matter of life and death. Since October of 1999, 14 commercial fishermen have lost their lives at sea. Commercial fishing is one of the most dangerous of occupations, and the Coast Guard every year saves fishermen who get into trouble. How many more would have died or been injured if the nearest Coast Guard cutter had not been in port? How many more fishermen or recreational boaters will lose their lives if the local Coast Guard stations must devote the vast majority of their time to homeland security functions?

I agree that the Coast Guard must perform homeland security functions.

The role the Coast Guard is playing in securing our ports is vitally important. But it is also vitally important that it not do so at the expense of its traditional missions.

To respond to this challenge, Senator STEVENS of Alaska and I teamed up to offer an amendment during the Governmental Affairs Committee markup of this legislation. We offered a successful amendment to preserve the traditional functions of the Coast Guard, even as the agency is moved into the new Department of Homeland Security. I want to recognize Senator STEVENS and thank him for his leadership on this issue, as well as recognize the support of our colleagues who voted for our amendment in committee.

Our amendment establishes the right balance between homeland security functions and the traditional missions of the Coast Guard. It ensures that the Coast Guard's non-homeland-security functions shall be maintained after its transfer into the new Department but also provides for flexibility in the event of a national emergency or an attack on our Nation.

The amendment also has the Commandant of the Coast Guard report directly to the Secretary. In the chairman's draft, he would not have done so. Thus, his role would have been devalued or demoted. Our amendment, the Stevens-Collins amendment, remedies that problem.

Our amendment will help to protect our coastal communities' economies, their way of life, and their loved ones, while Americans, wherever they live, can rest assured that the Coast Guard will perform its necessary and vital homeland security functions. I believe our language strikes the right balance.

As we craft this bill, it is also important that we never forget who is on the front lines in the event of a national emergency. We learned on September 11 who responds. It is not the response of people in Washington. The people who are on the front lines are our police officers, our firefighters, and our emergency medical personnel. That is why we need to make sure the new Department coordinates its activities and supports the activities of the local first responders.

I thank Senator FEINGOLD for his leadership in ensuring that the interests of the first responders are ever in our mind. I worked with him as well as with Senator CARPER on an amendment in committee that strengthens the role of first responders in homeland security, that recognizes their contributions.

We offered an amendment to enhance the cooperation and coordination among State and local first responders. The new Department will be required to designate an employee to be based in each and every 1 of the 50 States to be a liaison to State and local governments. I think that is so important. And it recognizes that this is a joint effort.

Similarly, an amendment Senator CARNAHAN and I offered will help our

community fire departments by expanding the current grant program known as the FIRE Program. As I am sure the Presiding Officer knows, because he represents a rural State, as I do, the FIRE Program has been so important in helping a lot of our small, rural fire departments upgrade their equipment and their training.

The amendment the Senator from Missouri and I offered in committee would expand the FIRE Program and provide fire departments with the ability over 3 years to receive maximum grants of \$100,000 to hire personnel. When I talk to my fire chiefs at home, they tell me that not only do they need help with equipment and training but they need more firefighters.

For those of us who went to New York City, one of the memories I will carry with me forever was talking with the fire commissioner and learning how many firefighters lost their lives on September 11. I will never forget his telling me that more firefighters died on that day than in the previous 70 years of the New York City Fire Department. It is the firefighters, the police officers, the emergency medical personnel who are always first on the scene. We cannot forget that these brave individuals will be the first to be called upon if and when a terrorist attack again occurs.

The New Department of Homeland Security is an essential component of our response to current and future threats. As the brutal attacks of September 11 demonstrated, distance from our enemies and the barriers of oceans no longer guarantee the security of our homeland. The bill we are considering today is another important step in preserving and strengthening our homeland security. I believe this legislation will help to make our Nation more secure, and I am hopeful that we will pass it quickly after due consideration. I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I yield myself 10 minutes from the time controlled by Senator BYRD.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Without objection, it is so ordered.

Mr. REED. Mr. President, we are here today for three major reasons. The first is the obvious need to restructure our security to confront new threats that were unanticipated in the cold war. The thought is that we do need to create a Department of Homeland Security. I support that. We are also here today because of the groundbreaking work of Senator LIEBERMAN and colleagues on the Governmental Affairs Committee. Before this proposal was invoked by the administration, they were working on it. They were developing through hearings the substance to make the presentation for which we are here today. But finally, we are here today because of Senator BYRD's insistence that we consider this very significant reorganization in the

context of our Constitution and of our responsibility as Members of the Senate to ensure we maintain the constitutional balance that is the heart of this Government.

It would be ironic indeed that in the name of winning the war on terror, we lost the very goal we were trying to protect, which is a constitutional government in which all of us play a significant role—the executive, the legislature, and the judiciary.

I think it is important, as we consider this legislation, to look carefully and thoughtfully at this proposed reorganization. It is an extraordinary combination of governmental entities. Approximately 170,000 employees will be combined into this new Department. It will affect 22 existing agencies. At least 11 full Senate committees have oversight responsibilities for these existing agencies.

This is an extraordinary moment, and we have to act deliberately, carefully, and thoughtfully. That is why I think it is so critical that this debate take place and why it was so important that Senator BYRD was able to indeed encourage and inspire and in many respects direct the debate we are having today.

One of the major elements within this organization—there are many, and I would like to allude to a few—is the treatment of intelligence. We understood very starkly and very tragically on September 11 that intelligence is probably the key to successful protection of the United States, our home. We understood that. And now we have to take that lesson and apply it.

One of the proposals made by the administration is to create an intelligence capacity within the new Department of Homeland Security. I agree with that. I think this new Department has to have an intelligence capacity. Unfortunately, in terms of the administration's proposal, I think there are two clear shortcomings. First, they have established the intelligence capacity in the context of the infrastructure protection responsibilities of this new Department. Clearly, intelligence has to go beyond simply protecting our infrastructure.

As Senator LIEBERMAN indicated previously in some of his comments, the World Trade Center and other targets were not properly considered critical infrastructure in the United States. But certainly on September 11 it was the target of terrorists. I think we have to disassociate the intelligence aspects of the Department in the very narrow view of infrastructure protection.

The amendment which Senator LIEBERMAN will propose once we move to the bill will effectively address the issue and the problems.

There is also another problem; that is, the administration would only allow this intelligence operation within the new Homeland Security Department to take data provided by other agencies and analyze it. It does not give that en-

tity the right to reach out and get raw intelligence data. I think that has to be a critical responsibility and a critical authority of this new intelligence division.

Again, the bill that I believe Senator LIEBERMAN will submit at the conclusion of this debate will have that authority in the Homeland Security Department. That is critical.

The essence here is to have a place in the Government where—as said so often because it is so true—all the dots are connected. But you can't do that and rely on the intelligence products of other agencies. You can't do that if your focus is restricted to infrastructure protection.

As a result, I think this is illustrative of some of the problems of the administration's proposal, and certainly some of the problems of the House bill. I should point out, as has been pointed out before, that we are now debating whether the Senate will bring it up for consideration.

There are other areas that are of concern to me. One has just been discussed quite articulately by my colleague and friend from Maine, Senator COLLINS; that is the Coast Guard. Here is an agency which, after September 11, has been decisively engaged in port protection. Port protection by the Coast Guard has gone from a rather minor operation before September 11 to one of their major operations. We have all seen that. In my community of Providence, RI, we have the Narragansett Bay. We have the Port of Providence. For the first time in my memory—and perhaps since World War II—we are seeing Coast Guard cutters escorting LNG tankers through the Narragansett Bay while the whole waterway was shut down by police and the National Guard. That is a time-consuming operation and one which has been replicated in the 361 ports of the United States. Also adding to that is the Coast Guard's obligation to patrol about 95,000 miles of coastline.

The problem, though, is, as my colleague from Maine pointed out, that the Coast Guard has many other responsibilities. She referred to a typical day. On a typical day, the Coast Guard conducts 109 search and rescue missions, saves 10 lives, assists 92 boaters in trouble, and seizes 169 pounds of marijuana and 360 pounds of cocaine worth about \$9.6 million. They intercept illegal immigrants coming into the United States. They respond to calls with respect to hazardous chemical spills. They inspect and repair boats. They assist nearly 200,000 tons of shipping just in the Great Lakes during the winter season alone. What will happen to these other responsibilities?

I know the committee has dealt with this and has tried to strike a balance. But it is an area of concern, and it is an area that illustrates the difficulty of combining all of these agencies with the mission of homeland security which might trump other legitimate missions. We have to be careful with

this. In the course of our debate and discussion, I think we have to focus on this issue and other issues.

Much can be said in a similar vein about the Immigration and Naturalization Service. Here you have an agency which has two major responsibilities: Protect the borders from illegal entry and at the same time provide assistance to those individuals who are in the United States legally who want to become citizens or who are here on some type of temporary protective status and need to be supervised by the United States. Those are diametrically opposed responsibilities.

We have to ask ourselves the question: If the INS is part of the Department of Homeland Security, will they emphasize one and de-emphasize the other? I think, frankly, most people will assume they will emphasize protecting the borders of the United States. After all, that is probably the most important issue with respect to homeland security.

What happens to the literally millions of individuals in the United States who legitimately need the services of the INS? Already today, there is a backlog of approximately 5 million cases around the country in terms of applications to the INS for clarification of status. Indeed, as the National Immigration Forum noted in their words, "it is hard to imagine that a Federal agency whose primary issue is to deter terrorism will be able to strike and maintain an appropriate balance between admitting newcomers and deterring security threats."

We see that these contradictions are replete throughout the reorganization. I again think a careful, thorough, and complete deliberation should be attendant to the consideration of this legislation.

I would like to mention just briefly a final area, an area which I think will come back again and again; that is, the administration's proposal—and the proposal in the House of Representatives—to put up severe barriers to the right of Federal employees to organize collectively and to exercise their rights; and, also, the protection for the Civil Service.

We have to be very conscious of this and ask the very fundamental question: Why are we attempting to undercut provisions for which no one, I think, has seriously made the case they have interfered with our ability to conduct the war on terror, to conduct intelligence operations?

As you probably realize, President Kennedy, 40 years ago, under executive order, gave Federal employees the right to organize in collective bargaining units. President Nixon expanded those rights in 1969. In 1978, the Civil Service Reform Act codified most of these executive orders.

Throughout the course of our history, these responsibilities have also given the President the authority to make exemptions for national security. And they have made those exemptions.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. REED. Mr. President, I ask unanimous consent for 1 additional minute.

Mr. BYRD. Mr. President, I yield one additional minute.

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

Mr. REED. I thank the Senator.

Over the course of our history, certainly in the 40 years, since these rights became established by executive order, there have always been appropriate exemptions in which the President could, for national security reasons, exempt individual employees or groups of employees from these rights. Our Presidents have done that. As a result, we have a situation in which I think a classic statement applies: If it is not broke, why are we trying to fix it? And it is not broken.

Again, in my final few moments, I heard from my colleague from Maine—and I have heard it again and again—those firefighters struggling up the stairs of the World Trade Center were union employees. No one checked with their bargaining agent before going up those stairs. In fact, I don't think they even checked with some of their captains and battalion commanders. They went up those upstairs because it was their job and their duty and their lives. And many of them paid with their lives.

It is that spirit that emanates from those firefighters that encourages and embraces all dedicated civil servants in our Federal Government. I think to pursue this initiative is really, in a way, a slap at them, an insult to what they bring each and every day to their jobs, to their tasks, to their duty.

So I hope we adopt provisions, which I believe the Lieberman bill has, which recognize the right to organize, the right for civil service protections, and also flexibility, for management, by the President.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, how much time does the distinguished Senator from South Carolina wish to have?

Mr. HOLLINGS. Thirty minutes.

Mr. BYRD. I ask the Senator, could you make it 20? Could we try for 20 to start with?

Mr. HOLLINGS. I will try to start with 20.

Mr. BYRD. I certainly want to be considerate with this Senator, this very senior Member of the body. And I am glad that he is a Member at this time.

Let's say 20 minutes at this point. My time is limited, but let's start with that and see how we come out.

Mr. HOLLINGS. Mr. President, right quickly, the distinguished Senator from Rhode Island was talking about the firemen running up those steps. It brings to mind 4 years ago the creation of the Office of Domestic Preparedness by this Congress.

We were confronting terrorism long before 9/11. Mr. President, 144,000 indi-

viduals have been through schools in Nevada, New Mexico, Louisiana, Texas, and Alabama. There are five big schools there to train the first responders. And that training has been really salutary in the sense that in the state of New York we have had over 17,000 first responders who were trained in the ODP program. So I say to the Senator, many who rushed up those steps had received the training and were responding in accordance with the foreseeability that we had in the congressional branch with respect to terrorism.

I jump right quickly, with my time limited, to the hearings that we had. We hear so much about Hart-Rudman. We had hearings in the Senate, not just deciding in accordance with the large bureaucracy, but, on the contrary, after 3 days of hearings in the State-Justice-Commerce Subcommittee of Appropriations we came down with a further beefing up of the Office of Domestic Preparedness. At the present time, ODP has a budget of \$1.2 billion. We already have at the desk, unanimously approved by the Appropriations Committee and ready for debate, an increase of \$1 billion, some \$2.2 billion.

In short, we were on the floor of the Senate on 9/11 debating terrorism. I emphasize that because they go right to the point and say they don't believe in domestic security.

We have been working on domestic security since immediately after 9/11. I got together—and I must tell this story because it has already passed me with respect to the gun crowd—but be that as it may, I sat down with the El Al chief pilot from Israel who flew over from Tel Aviv and sat down and talked with us, myself and about four other Senators.

At that seating, he emphasized the security of the cockpit door because I asked him: Sir, how is it that El Al, the airline most subject to be under the gun, where the terrorists do not even wait now, for example, to get to a plane—they shoot up the ticket counter like they did out in Los Angeles—that you have not had a hijacking in 30 years?

He said: There is one way to prevent hijackings. Secure the cockpit door, and never open that door in flight.

Let me emphasize, he said: My wife can be assaulted in the cabin. I would go straight to the ground, and law enforcement would meet me there.

In flight, you do not want to give responsibility to the pilots for law and order. You give the pilots the responsibility for flying the plane. If they have the responsibility, with a gun, for law and order, then they have made a bad mistake because the pilots cannot prevent a plane from being hijacked. The enemy is not a single hijacker. There are teams of terrorists, suicidal terrorists, who do not mind losing their lives. And, yes, you can stop one or two, maybe, but the next three will take that plane over, and you will have a 9/11.



I think our responsibility in this particular debate is—in addition to going up to New York on Friday, in addition to having the debate here, and a whole day turned over on next Wednesday, which I commend—but the main thing is for us to act and assume the responsibility that a 9/11 never happens again.

Once you secure that door—Delta Airlines has gone along with it, JetBlue is going along with it, but we are still debating it.

We immediately moved for airline security. We passed it 100-0 in a bipartisan bill. You see in the morning paper it is not turf. This Senate voted to put the Transportation Security Administration in the Justice Department. I was not trying to hold it because I am chairman of the Transportation Committee. I have commerce, science, and transportation. I was not trying to hold it in my committee. I voted to put it in Justice and defended this position on the House side arguing that Justice would get it up and going.

Instead I got a bureaucrat who was more interested in the logo and his office equipment and did not even talk to the airline managers. We confirmed—the pressure was on—before Christmas.

We voted without the committee confirming this particular gentlemen. We just reported it out and we had a vote on it without any debate whatsoever. But now we are behind the curve and we have Admiral Malloy over there, and I think he is a great man, and I think we can do a lot of repairing and we are going to be realistic about what we can accomplish. There is no use arguing about what kind of terminal dates and everything else. We live in the real world and we must work together.

We put in rail security, we put in seaport security before Christmas of last year. You don't find the administration pressuring the House to get going to pass it. They are still fussing about fees and taxes over there. They don't want to pay for it. It is domestic politics, reelection, not seaport security.

So there we are. We can go down the list of all the work we have done on it, and here comes this bill and what does it do? It organizes every entity that did not fail, like the Coast Guard, FEMA, and the Agriculture Department and everything else, and ignores the ones that did fail. 9/11 was an intelligence failure, and you will not get that out of the Select Committee on Intelligence that is investigating between the House and Senate because the entities of this administration—I am not saying the President knew anything will not be embarrassed. I am sure if the President knew anything he would have put measures in place to avoid it. But I can tell you here and now that the committee that is investigating is not going to speak out about the intelligence failure because it would reflect, if you please, poorly on the President's management of their FBI, their CIA, their National Security Agency.

I have been on the Intelligence Committee. In fact, I started in this work

in 1954 on the Hoover Commission. The same problem we had almost 50 years ago with the FBI talking to the CIA, and the CIA talking to the FBI, persists today. I have gotten together with Bob Mueller, and he is a good man. He has hired some CIA officials. Last year before Thanksgiving, we gave him \$750 million to clean up his computerization. He reorganized the Department and instituted a Department of Domestic Intelligence and now is talking, I understand, to George Tenet, the Director of the Central Intelligence Agency.

The CIA failed on 9/11. We already had the blowing up of the World Trade Towers almost 10 years ago. But the CIA said we didn't know a plane could be used. They did not know a plane could be used? They had the direct record in 1994.

In 1994, they had the Islamic group that was going to blow up the Eiffel Tower. Then, in 1995, they were working on a case out there in the Philippines where they uncovered a plan to blow up 12 planes at one time. The documents revealed that the terrorists, who had links to al Qaida, planned to ram a plane into the CIA building itself. But now they say they had no idea you could fly a plane into a building. Then al-Qaida blew up our embassies and blew up the USS *Cole*. They knew.

Right to the point, they had warned about this crowd so much so that the President actually had on his desk on September 10—the day before—a plan to attack Afghanistan. We had the intelligence. We just were not paying attention. The FBI also failed. There isn't any question about that. We know about the flight schools in Arizona. Agent Williams sent notice saying: There is something wrong. These people of Mideastern descent are trying to learn how to fly. We believe they are connected to fundamentalist groups, something's not right to me.

That word never did get up to the head of the FBI or the President of the United States. That was an intelligence failure. But we had the woman—Agent Coleen Rowley, I think her name was. When they arrested Moussaoui in Minnesota, they became so exercised she wrote a memo that: Look, this fellow doesn't want to learn how to take-off or land. He only wants to learn how to fly. We need to investigate him further. But the Minnesota field office was denied permission for a warrant.

Why should we investigate him further? Because he was training to run a plane into the World Trade Towers. That is the record. I am not on any Intelligence Committee. I am not giving you any security information. If you want any kind of information along that line, there is a wonderful article that appeared in Time magazine on May 27, 2002.

I ask unanimous consent that it be printed in the RECORD.

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

[From Time Magazine, May 27, 2002]

HOW THE U.S. MISSED THE CLUES

(By Michael Elliott)

None of this is pretty. In the immediate aftermath of the Sept. 11 attacks, members of the American political establishment stood together, determined to fight the war against terrorism, supporting those in military uniform and the buttoned-down bureaucrats whose job it was to make sure that something so awful would not happen again. Everyone—inside the Bush Administration as well as outside it—knew there had been massive failures of intelligence in the period before the attacks. But after Sept. 11, the Administration earned a reputation for steely-eyed competence, and its political opponents couched their legitimate criticism in language politer than that to which Washington is accustomed. That was then. In the past month, a series of disclosures have cast doubt on the most basic abilities of the national-security establishment. The Administration has looked alternately shifty and defensive; Democrats—some of them presidential candidates-in-waiting—have postured on motormouth TV. And the nation has been forced into a period of painful second-guessing, asking whether Sept. 11 could have been prevented. In August, it turns out, the President was briefed by the CIA on the possibility that al-Qaeda, the terrorist network headed by Osama bin Laden, might use hijacked airliners to win concessions from the U.S. Sources tell TIME that the briefing, which was first reported by CBS News, was in response to a request by Bush for detailed information on the kind of threat posed by al-Qaeda, not to American interests overseas—which had long preoccupied the spooks—but at home. During the period in which the brief was prepared, says a senior intelligence official, the CIA came to the conclusion that "al-Qaeda was determined to attack the U.S." After the strike came, White House sources concede, the Administration made a conscious decision not to disclose the August briefing, hoping that it would be discussed "in context"—and months later—when congressional investigations into the attacks eventually got under way. And that wasn't the only embarrassing paper kept under wraps. Earlier this month, the Associated Press reported new details from a July 2001 memo by an FBI agent in Phoenix, Ariz., who presciently noted a pattern of Arab men signing up at flight schools. The agent, Kenneth Williams, 42, has spent 11 years working in an FBI antiterrorism task force. He recommended an investigation to determine whether al-Qaeda operatives were training at the schools. He was ignored, and after the existence of the memo became known, the FBI insisted that even if it had been acted upon, it would not have led to the detention of the Sept. 11 hijackers. (Only one of them, Hani Hanjour, had trained in Arizona, and did so before Williams focused on flight school.) But sources tell TIME that at least one of the men Williams had under watch—a Muslim who has now left the U.S.—did indeed have al-Qaeda links. And Williams identified a second pair of suspected Islamic radicals now living in the U.S. as resident aliens, the sources say. They are currently under FBI surveillance. As if those missed signals weren't enough, last week it was also disclosed that in August, when the U.S. detained Zacarias

Moussaoui—a man the French government knew was associated with Islamic extremists and who apparently wanted to learn to fly

jumbo jets but not land them, and has since been charged with complicity in the Sept. 11 attacks—the FBI told nobody in the White House's Counterterrorism Security Group. But the CSG, which comes under the aegis of National Security Adviser Condoleezza Rice, is supposed to coordinate the government's response to terrorist threats.

At high levels of government, the awful possibility is dawning that things could have been different. "If we'd had access to Moussaoui, if we'd had access to the Phoenix memo, could we have broken up the plot?" asks a White House official who works on counterterrorism. Then he answers his own question: "We would have taken action, and there's at least a distinct possibility that we may at the very least have delayed it." Bush was outraged at the suggestion that he might have been warned about impending strikes and failed to act. To ward off Democratic criticism, Vice President Dick Cheney warned against trying to "seek political advantage" from the new revelations; such commentary, he said, "is thoroughly irresponsible and totally unworthy of national leaders in a time of war." He should have saved his breath; the blame game is under way, long before the lessons of all that happened last summer have been absorbed. And one thing we now know: there plenty of blame to go around.

George W. Bush, they say, is a quick study, and last summer he needed to be. Threats and warnings of possible terrorist outrages against American interests were howling into Washington like a dirty blizzard. Fighting terrorism hadn't been a top priority in the early months of the Administration; cutting taxes, building a missile shield and other agenda had crowded it out. Bush's national-security aides had been warned during the transition that there was an al-Qaeda presence in the U.S., but in the first months of the Administration, says one official, a sense of urgency was lacking: "They were new to this stuff."

By the time Bush left for a month's vacation on his ranch in Crawford, Texas, on Aug. 4, that mood had changed. Where the President goes, the responsibilities of office follow, and so, each morning, Bush sat in the ranch office and received the CIA's Presidential Daily Brief. The brief—or PDB, in Langley-speak—is the CIA's chance to mainline its priorities into the President's thinking. Each day, the PDB is winnowed to a few pages; when the President is in Washington, one of two "briefers"—agency up-and-comers who flesh out the written text—gets to work at 2 a.m. to bone up on background material. The brief itself is delivered at 8 a.m. in front of the President's national-security team. (Sometimes CIA Director George Tenet delivers it himself.) One briefers had moved to Texas for the vacation, and the PDB was transmitted to Crawford over a secure system. At the briefing on Monday, Aug. 6—a day when the Texas heat would reach 100 [degrees]—Bush received a 1½-page document, which, according to Rice, was an "analytic report" on al-Qaeda. Included was a mention that al-Qaeda might be tempted to hijack airliners, perhaps so that they might use hostages to secure the release of an al-Qaeda leader or sympathizer. Rice was not present but discussed the briefing with Bush immediately after it had ended, as she always does.

They had much to talk about. Throughout the summer, top officials had become convinced, with a growing sense of foreboding, that a major operation by al-Qaeda was in the works. For many in the loop, it seemed likely that any attack would be aimed at Americans overseas. But sources tell TIME that the Aug. 6 briefing had a very different focus; it was explicitly concerned with ter-

rorism in the homeland. The Aug. 6 briefing had been put together, says one official, because the President had told Tenet, "Give me a sense of what al-Qaeda can do inside the U.S." At a press conference last week, Rice said the brief concentrated on the history and methods of al-Qaeda. Since much of the material in it was a rehash of intelligence dating to 1997 and '98, it is doubtful that it was much use in answering Bush's question.

According to Rice, there was just a sentence or two on hijacking—and the passage did not address the possibility that a hijacked plane would ever be flown into a building. That was the first of four crucial mistakes made last summer. Administration officials insisted all last week that turning a plane into a suicide bomb was something that nobody had contemplated. But that just isn't so. In 1995, authorities in the Philippines scuppered a plan—masterminded by Ramzi Yousef, who had also plotted the 1993 World Trade Center bombing—for mass hijackings of American planes over the Pacific. Evidence developed during the investigation of Yousef and his partner, Abdul Hakim Murad, uncovered a plan to crash a plane into CIA headquarters in Langley, Va. And as long ago as 1994, in an incident that is well known among terrorism experts, French authorities foiled a plot by the Algerian Armed Islamic Group to fly an airliner into the Eiffel Tower. "Since 1994," says a French investigator into al-Qaeda cases, "we should all have been viewing kamikaze acts as a possibility for all terrorist hijackings." But if Rice's account is accurate, nobody significant in the Bush Administration did.

There might have been more discussion of the risks of hijackings in the President's briefing if its writers had known about the Phoenix memo. But they hadn't seen it, nor had anyone in the CIA or the White House. Yet Senator Richard Shelby, the ranking Republican on the Senate Intelligence Committee, calls the memo, which is said to contain detailed descriptions of named suspects, "one of the most explosive documents I've seen in eight years." The memo, on which the Senate Intelligence Committee was briefed last November, has now become the focus of a huge political row in Washington. Members of the Senate Judiciary Committee—including Republican Arlen Specter, who had an angry exchange over the memo with FBI Director Robert Mueller on Saturday—are desperate to see it, and may yet subpoena it. "The fact that the Phoenix memo died on Somebody's desk takes your breath away," says Senator Richard Durbin, a Democratic committee member from Illinois. "They just shuffled it off."

Agent Williams wrote the memo on July 5, detailing his suspicions about some Arabs he had been watching, who he thought were Islamic radicals. Several of the men had enrolled at Embry-Riddle Aeronautical University in Prescott, Ariz. Williams posited that bin Laden's followers might be trying to infiltrate the civil-aviation system as pilots, security guards or other personnel, and he recommended a national program to track suspicious flight-school students. The memo was sent to the counterterrorism division at FBI headquarters in Washington and to two field offices, including the counterterrorism section in New York, which has had long experience in al-Qaeda investigations.

That experience counted for nothing. In all three offices, the memo was pretty much ignored, disappearing into the black hole of bureaucratic hell that is the FBI. That was the second key mistake. Sources tell TIME that the memo was never forwarded—not even to the level of Mike Rolinec, chief of the international-terrorism section. "The thing fell into the laps of people who were

grossly overtaxed," says a senior FBI official. The G-men claim to have been swamped by tips about coming al-Qaeda operations. But Williams was onto something. The flight students he was tracking were supporters of radical Islamic groups. Some of them, sources say, are believed to be connected to Hamas and Hizballah, terrorist organizations based in the Middle East, while at least one other—who has left the U.S.—had links to al-Qaeda. Another pair mentioned in the memo, neither of whom attended flight school, are the ones under FBI surveillance—which, sources say, is the reason Mueller won't make the memo public.

However fevered the analysis of the Williams memo is now, it didn't get much attention when it was written. Last July, FBI headquarters wasn't concentrating on an attack within the U.S. "Nobody was looking domestically," says a recently retired FBI official. "We didn't think they had the people to mount an operation here."

That was the third huge mistake—and a somewhat baffling conclusion to draw, given the evidence at hand. In spring of 2001, Ahmed Ressam, the "millennium bomber," was on trial in Los Angeles, charged with being part of a plot to bomb Los Angeles International Airport and other locations at the end of 1999. In her press conference last week, Rice conceded that in 2001 the FBI "was involved in a number of investigations of potential al-Qaeda personnel operating in the United States."

But investigators had some reasons for being preoccupied with attacks and threats outside the U.S. Al-Qaeda's most notorious blows against American interests had taken place in Nairobi and Dar es Salaam, the sites of the 1998 embassy bombings, and in Yemen, where the U.S.S. Cole was bombed in October 2002. And in the first half of last year, the CSG monitored information suggesting the likelihood of another attack overseas. In June 2001, the State Department issued a worldwide caution warning American citizens of possible attacks. That month, says a recently retired senior FBI official, "we were constantly worried that something was going to happen. Our best guesstimate was something in Southeast Asia." A French investigator involved in al-Qaeda cases confirms the thought. "The prevailing logic from around 1998," he says, "was that al-Qaeda and bin Laden had very openly designated America as its prime target—but it was a target that it preferred to attack outside the U.S."

By July the level of noise about terrorism from intelligence sources around the world was deafening. The CSG, then chaired by Richard Clarke, a Clinton Administration holdover who was consumed with terrorist threats to the point of obsession, was meeting almost every day. A specific threat was received on the life of Bush, who was due to visit Genoa, Italy, for a G-8 summit that month. Roland Jacquard, a leading French expert on terrorism, says that when Russian and Western intelligence agencies compared notes before the summit, they were stunned to find they all had information indicating that a strike was in the offing. When the Genoa summit passed without incident, says a French official, attention turned to the possibility of attacks on U.S. bases in Belgium and Turkey. Then, at the end of July, Djamel Beghal, a Franco-Algerian al-Qaeda associate, was picked up in Dubai on his way from Afghanistan back to Europe. Beghal started talking and implicated a network of al-Qaeda operatives in Europe, who, he said, were planning to blow up the American embassy in Paris. (Beghal, who has since been extradited to France, has said his confession was coerced.) "We shared everything we knew with the Americans," says a French justice official.



They may have shared too much. At least in France, investigators now acknowledge that Al-Qaeda may have been involved in a massive feint to Europe while the real attack was always planned for the U.S. "People were convinced that Europe remained the theater for Islamic terrorists," says Jacquard. "It's anyone's guess whether that was a technique to get people looking in the wrong place. But that's what happened."

By the beginning of August, the President had made his request for a briefing on domestic threats. One of them was about to be uncovered. And therein lay the fourth mistake. On Aug. 16, Moussaoui was arrested in Minnesota for an immigration violation, just a day after the staff at the flight school where he was training told the FBI of their suspicions about him. The Minnesotans weren't alone; when American officials checked with their French counterparts, they discovered that Moussaoui had long been suspected of mixing in extremist circles. (The Zelig of modern terrorism, Moussaoui has been associated with al-Qaeda networks everywhere from London to Malaysia.) The FBI started urgently investigating Moussaoui's past; agents in Minneapolis sought a national-security warrant to search his computer files but were turned down by lawyers at FBI headquarters who said they didn't have sufficient evidence that he belonged to a terrorist group. Immediately after Moussaoui's arrest, agents twice visited the Airman Flight School in Norman, Okla., where he had studied before heading to Minnesota; two of the Sept. 11 hijackers had visited Norman in July 2000. The FBI did inform the CIA of Moussaoui's arrest, and the CIA ran checks on him while asking foreign intelligence services for information. But neither the FBI nor the CIA ever informed the counterterrorism group in the White House. "Do you think," says a White House antiterrorism official, "that if Dick Clarke had known that the FBI had in custody a foreigner who couldn't speak English, who was trying to fly a plane in midair, he wouldn't have done something?"

Since at least two of the four failures—those involving Moussaoui and the Phoenix memo—can be laid at the door of the FBI, the bureau is feeling the heat. "The FBI has a long pattern of not sharing information with others," says a former Clinton Administration official. "Now it's not even sharing the information with itself." Mueller, who knew about the Phoenix memo shortly after Sept. 11, plainly did not anticipate the criticism it would engender. Since it became public, officials have defensively pointed out that if the bureau had tried to track down all Muslim flight-school attendees, it would have been accused of racial profiling. White House officials defend Mueller; he is "tenacious about changing things," says one, who admits, "You can't change a culture that's 60 years in the making overnight." But on Capitol Hill the bureau is running out of friends. "I have no doubt that the FBI needs reform," said Senate Republican leader Trent Lott last week.

Yet when the blame gets assigned, as it will now that a joint congressional investigation into Sept. 11 is getting down to work, the FBI won't monopolize it. The ugly truth is that nine months after huge weaknesses in the national security system were revealed, they remain unaddressed. In Washington, says a senior Clinton Administration official, "information just moves through stovepipes," never getting pooled by different agencies until it is too late. The intelligence services were built to fight the cold war, not an enemy that flits from Afghan caves to apartments in London. The division between domestic and international security made sense when the former was concerned

with what criminals did and the latter with foreign countries. But some criminals are now as powerful as countries, and some countries are run by criminals.

Nine months ago, the appointment of Tom Ridge as Homeland Security czar was billed as the shake-up Washington needed. So far, he has been more of a mild foot stamp than an earthquake. Instead of real reform, the Administration has resorted to its usual mode: attempting to control warring satrapies from the White House. The remarkable aspect of last week's events in Washington was the unintended revelation that Rice is the true manager of counterterrorism policy. In the past, the National Security Council got into trouble when it adopted an operational role rather than one of analysis (think Oliver North), and for Bush this identification of one of his closest advisers with the operational failures of counterterrorism policy could yet be politically troubling.

Among his supporters, however, the President still rides high. Bush's simple, passionate argument—that he would never have sat idly if he had known what was coming on Sept. 11—helped stiffen spines. Republicans pointed out that members of congressional intelligence committees get the same information the President receives in his PDB and yet had not made a fuss about the Aug. 6 briefing. That claim was disputed; Tom Daschle, the Democrat's leader in the Senate, insisted the Senate and the Administration did not have "identical information" about al-Qaeda threats.

In a sense, the spat over who got what version of which memo epitomizes Washington at its worst. The capital at its best would appreciate that the most important question isn't what Bush (or anyone else) knew before Sept. 11; it is what the Administration and Congress have and have not done to fix a broken system. But November and the midterm elections, you may have noticed, are only six months away. Washington is reverting to form.

Mr. HOLLINGS. Time magazine got into it very thoroughly—much more so than the committee that has been leaking. I was disappointed Sunday when I heard my distinguished colleague from Tennessee say: No, he would not take a polygraph test.

I am an old trial lawyer. You are not going to convict my client on a polygraph test. We used it in the Hoover Commission 50 years ago, and it is an indicator. I wanted to make sure the staff on the Intelligence Committee—as I found out, I had been doubledealed by the CIA and was told: I cannot give you that information, Senator, because your staff does not have the appropriate clearance.

Before you serve here as a Capitol policeman, you have to take a polygraph, and also before you serve in the FBI, CIA, and Secret Service—go down the list—but not the staff of the Senate Intelligence Committee.

So I learned that in a war you never ask your man to do something you do not do yourself first. So I went over to take a polygraph test. To the very first question, I started off my answer "in my humble opinion" and the needle went right off the chart. I flunked. It took 2 hours and they gave me a chance again, and after that 2-hour test, I passed it and came back and I still brought it up that as a member of the Intelligence Committee, they do

not have the appropriate clearance. If they want to know where the leaks are, go to the committees.

Mr. President, the National Security Agency failed. They had all kinds of warnings about al-Qaeda. They had Arabic friends over there. They got the word on September 10 in Arabic that "the match is about to begin," but they didn't translate the Arabic into English until September 12.

Now comes the National Security Council. It is interesting that in 1947 we had the same problem of coordination—instituting not only the CIA, but the 1947 National Security Council that the function of the Council shall be to advise the President with respect to the integration—that is joining—of domestic, foreign, and military policies relating to the national security, so as to enable the military services and the other Departments and Agencies of Government to cooperate more effectively in matters involving national security.

If you don't have a President right at the catbird seat pointing to them and saying you either talk and coordinate with each other or else you are out, it is not going to be done. You can pass all the bills you want in the U.S. Congress. You are just passing another entity for finger-pointing. They need correlation again and again.

Here is exactly what the President said in the National Security Presidential directive he made. I had a copy of it here. It is with respect to ordering the bush National Security Council. Incidentally, what I am saying I had said to him at the Cabinet table over 2 months ago. But on February 13—I ask unanimous consent that this National Security Presidential directive of February 13, 2001, be printed in the RECORD.

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

NATIONAL SECURITY PRESIDENTIAL DIRECTIVES—NSPDS, THE WHITE HOUSE, WASHINGTON, FEBRUARY 13, 2001

#### MEMORANDUM FOR

The Vice President  
The Secretary of State  
The Secretary of the Treasury  
The Secretary of Defense  
The Attorney General  
The Secretary of Agriculture  
The Secretary of Commerce  
The Secretary of Health and Human Services  
The Secretary of Transportation  
The Secretary of Energy  
Administrator, Environmental Protection Agency  
Director of the Office of Management and Budget  
United States Trade Representative  
Chairman, Council of Economic Advisers  
Director, National Drug Control Policy  
Chief of Staff to the President  
Director of Central Intelligence  
Director, Federal Emergency Management Agency  
Assistant to the President for National Security Affairs  
Assistant to the President for Economic Policy  
Counsel to the President  
Chief of Staff and Assistant to the Vice President for National Security Affairs

Director, Office of Science and Technology Policy  
 Chairman, Board of Governors of the Federal Reserve  
 Chairman, Council on Environmental Quality  
 Chairman, Export-Import Bank  
 Chairman of the Joint Chiefs of Staff  
 Commandant, U.S. Coast Guard  
 Administrator, National Aeronautics and Space Administration  
 Chairman, Nuclear Regulatory Commission  
 Director, Peace Corps  
 Director, Federal Bureau of Investigation  
 Director, Defense Intelligence Agency  
 President, Overseas Private Investment Corporation  
 Chairman, Federal Communications Commission  
 Commissioner, U.S. Customs Service  
 Administrator, Drug Enforcement Administration  
 President's Foreign Intelligence Advisory Board  
 Archivist of the United States  
 Director, Information Security Oversight Office  
 Subject: Organization of the National Security Council System

This document is the first in a series of National Security Presidential Directives. National Security Presidential Directives shall replace both Presidential Decision Directives and Presidential Review Directives as an instrument for communicating presidential decisions about the national security policies of the United States.

National security includes the defense of the United States of America, protection of our constitutional system of government, and the advancement of United States interest around the globe. National security also depends on America's opportunity to prosper in the world economy. The National Security Act of 1947, as amended, established the National Security Council to advise the President with respect to the integration of domestic, foreign, and military policies relating to national security. That remains its purpose. The NSC shall advise and assist me in integrating all aspects of national security policy as it affects the United States—domestic, foreign, military, intelligence, and economics (in conjunction with the National Economic Council (NEC)). The National Security Council system is a process to coordinate executive departments and agencies in the effective development and implementation of those national security policies.

The National Security Council (NSC) shall have as its regular attendees (both statutory and non-statutory) the President, the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Assistant to the President for National Security Affairs. The Director of Central Intelligence and the Chairman of the Joint Chiefs of Staff, as statutory advisors to the NSC, shall also attend NSC meetings. The Chief of Staff to the President and the Assistant to the President for Economic Policy are invited to attend any NSC meeting. The Counsel to the President shall be consulted regarding the agenda of NSC meetings, and shall attend any meetings when, in consultation with the Assistant to the President for National Security Affairs, he deems it appropriate. The Attorney General and the Director of the Office of Management and Budget shall be invited to attend meetings pertaining to their responsibilities. For the Attorney General, this includes both those matters within the Justice Department's jurisdiction and those matters implicating the Attorney General's responsibility under 28 U.S.C. 511 to give his advice and opinion on questions of law when required by the President. The heads of other executive depart-

ments and agencies, as well as other senior officials, shall be invited to attend meetings of the NSC when appropriate.

The NSC shall meet at my direction. When I am absent from a meeting of the NSC, at my direction the Vice President may preside. The Assistant to the President for National Security Affairs shall be responsible, at my direction and in consultation with the other regular attendees of the NSC, for determining the agenda, ensuring that necessary papers are prepared, and recording NSC actions and Presidential decisions. When international economic issues are on the agenda of the NSC, the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy shall perform these tasks in concert.

The NSC Principals Committee (NSC/PC) will continue to be the senior interagency forum for consideration of policy issues affecting national security, as it has since 1989. The NSC/PC shall have as its regular attendees the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Chief of Staff to the President, and the Assistant to the President for National Security Affairs (who shall serve as chair). The Director of Central Intelligence and the Chairman of the Joint Chiefs of Staff shall attend where issues pertaining to their responsibilities and expertise are to be discussed. The Attorney General and the Director of the Office of Management and Budget shall be invited to attend meetings pertaining to their responsibilities. For the Attorney General, this includes both those matters within the Justice Department's jurisdiction and those matters implicating the Attorney General's responsibility under 28 U.S.C. 511 to give his advice and opinion on questions of law when required by the President. The Counsel to the President shall be consulted regarding the agenda of NSC/PC meetings, and shall attend any meeting when, in consultation with the Assistant to the President for National Security Affairs, he deems it appropriate. When international economic issues are on the agenda of the NSC/PC, the Committee's regular attendees will include the Secretary of Commerce, the United States Trade Representative, the Assistant to the President for Economic Policy (who shall serve as chair for agenda items that principally pertain to international economics), and, when the issues pertain to her responsibilities, the Secretary of Agriculture. The Chief of Staff and National Security Advisor to the Vice President shall attend all meetings of the NSC/PC, as shall the Assistant to the President and Deputy National Security Advisor (who shall serve as Executive Secretary of the NSC/PC). Other heads of departments and agencies, along with additional senior officials, shall be invited where appropriate.

The NSC/PC shall meet at the call of the Assistant to the President for National Security Affairs in consultation with the regular attendees of the NSC/PC. The Assistant to the President for National Security Affairs shall determine the agenda in consultation with the foregoing, and ensure that necessary papers are prepared. When international economic issues are on the agenda of the NSC/PC, the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy shall perform these tasks in concert.

The NSC Deputies Committee (NSC/DC) will also continue to serve as the senior sub-Cabinet interagency forum for consideration of policy issues affecting national security. The NSC/DC can prescribe and review the work of the NSC interagency groups discussed later in this directive. The NSC/DC shall also help ensure that issues being brought before the NSC/PC or the NSC have

been properly analyzed and prepared for decision. The NSC/DC shall have as its regular members the Deputy Secretary of State or Under Secretary of the Treasury or Under Secretary of the Treasury for International Affairs, the Deputy Secretary of Defense or Under Secretary of Defense for Policy, the Deputy Attorney General, the Deputy Director of the Office of Management and Budget, the Deputy Director of Central Intelligence, the Vice Chairman of the Joint Chiefs of Staff, the Deputy Chief of Staff to the President for Policy, the Chief of Staff and National Security Adviser to the Vice President, the Deputy Assistant to the President for International Economic Affairs, and the Assistant to the President and Deputy National Security Advisor (who shall serve as chair). When international economic issues are on the agenda, the NSC/DC's regular membership will include the Deputy Secretary of Commerce, A Deputy United States Trade Representative, and, when the issues pertain to his responsibilities, the Deputy Secretary of Agriculture, and the NSC/DC shall be chaired by the Deputy Assistant to the President for International Economic Affairs for agenda items that principally pertain to international economics. Other senior officials shall be invited where appropriate.

The NSC/DC shall meet at the call of its chair, in consultation with the other regular members of the NSC/DC. Any regular member of the NSC/DC may also request a meeting of the Committee for prompt crisis management. For all meetings the chair shall determine the agenda in consultation with the foregoing, and ensure that necessary papers are prepared.

The Vice President and I may attend any and all meetings of any entity established by or under this directive.

Management of the development and implementation of national security policies by multiple agencies of the United States Government shall usually be accomplished by the NSC Policy Coordination Committees (NSC/PCCs). The NSC/PCCs shall be the main day-to-day fora for interagency coordination of national security policy. They shall provide policy analysis for consideration by the more senior committees of the NSC system and ensure timely responses to decisions made by the President. Each NSC/PCC shall include representatives from the executive departments, offices, and agencies represented in the NSC/DC.

Six NSC/PCCs are hereby established for the following regions: Europe and Eurasia, Western Hemisphere, East Asia, South Asia, Near East and North Africa, and Africa. Each of the NSC/PCCs shall be chaired by an official of Under Secretary or Assistant Secretary rank to be designated by the Secretary of State.

Eleven NSC/PCCs are hereby also established for the following functional topics, each to be chaired by a person of Under Secretary or Assistant Secretary rank designated by the indicated authority:

Democracy, Human Rights, and International Operations (by the Assistant to the President for National Security Affairs);

International Development and Humanitarian Assistance (by the Secretary of State);

Global Environment (by the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy in concert);

International Finance (by the Secretary of the Treasury);

Transnational Economic Issues (by the Assistant to the President for Economic Policy);

Counter-Terrorism and National Preparedness (by the Assistant to the President for National Security Affairs);

Defense Strategy, Force Structure, and Planning (by the Secretary of Defense);

Arms Control (by the Assistant to the President for National Security Affairs);

Proliferation, Counterproliferation, and Homeland Defense (by the Assistant to the President for National Security Affairs);

Intelligence and Counterintelligence (by the Assistant to the President for National Security Affairs); and

Records Access and Information Security (by the Assistant to the President for National Security Affairs).

The Trade Policy Review Group (TPRG) will continue to function as an interagency coordinator of trade policy. Issues considered within the TPRG, as with the PCCs, will flow through the NSC and/or NEC process as appropriate.

Each NSC/PCC shall also have an Executive Secretary from the staff of the NSC, to be designated by the Assistant to the President for National Security Affairs. The Executive Secretary shall assist the Chairman in scheduling the meetings of the NSC/PCC, determining the agenda, recording the actions taken and tasks assigned, and ensuring timely responses to the central policymaking committees of the NSC system. The Chairman of each NSC/PCC, in consultation with the Executive Secretary, may invite representatives of other executive departments and agencies to attend meetings of the NSC/PCC where appropriate.

The Assistant to the President for National Security Affairs, at my direction and in consultation with the Vice President and the Secretaries of State, Treasury, and Defense, may establish additional NSC/PCCs as appropriate.

The Chairman of each NSC/PCC, with the agreements of the Executive Secretary, may establish subordinate working groups to assist the PCC in the performance of its duties.

The existing system of Interagency Working Groups is abolished.

The oversight of ongoing operations assigned in PDD/NSC-56 to Executive Committees of the Deputies Committee will be performed by the appropriate regional NSC/PCCs, which may create subordinate working groups to provide coordination for ongoing operations.

The Counter-Terrorism Security Group, Critical Infrastructure Coordination Group, Weapons of Mass Destruction Preparedness, Consequences Management and Protection Group, and the interagency working group on Enduring Constitutional Government are reconstituted as various forms of NSC/PCC on Counter-Terrorism and National Preparedness.

The duties assigned in PDD/NSC-75 to the National Counterintelligence Policy Group will be performed in the NSC/PCC on Intelligence and Counterintelligence, meeting with appropriate attendees.

The duties assigned to the Security Policy Board and other entities established in PDD/NSC-29 will be transferred to various NSC/PCCs, depending on the particular security problem being addressed.

The duties assigned in PDD/NSC-41 to the Standing Committee on Nonproliferation will be transferred to the PCC on Proliferation, Counterproliferation, and Homeland Defense.

The duties assigned in PDD/NSC-36 to the Interagency Working Group for Intelligence Priorities will be transferred to the PCC on Intelligence and Counterintelligence.

The duties of the Human Rights Treaties Interagency Working Group established in E.O. 13107 are transferred to the PCC on Democracy, Human Rights, and International Operations.

The Nazi War Criminal Records Interagency Working Group established in E.O.

13110 shall be reconstituted, under the terms of that order and until its work ends in January 2002, as a Working Group of the NSC/PCC for Records Access and Information Security.

Except for those established by statute, other existing NSC interagency groups, ad hoc bodies, and executive committees are also abolished as of March 1, 2001, unless they are specifically reestablished as subordinate working groups within the new NSC system as of that date. Cabinet officers, the heads of other executive agencies, and the directors of offices within the Executive Office of the President shall advise the Assistant to the President for National Security Affairs of those specific NSC interagency groups chaired by their respective departments or agencies that are either mandated by statute or are otherwise of sufficient importance and vitality as to warrant being reestablished. In each case the Cabinet officer, agency head, or office director should describe the scope of the activities proposed for or now carried out by the interagency group, the relevant statutory mandate if any, and the particular NSC/PCC that should coordinate this work. The Trade Promotion Coordinating Committee established in E.O. 12870 shall continue its work, however, in the manner specified in that order. As to those committees expressly established in the National Security Act, the NSC/PC and/or NSC/DC shall serve as those committees and perform the functions assigned to those committees by the Act.

To further clarify responsibilities and effective accountability within the NSC system, those positions relating to foreign policy that are designated as special presidential emissaries, special envoys for the President, senior advisors to the President and the Secretary of State, and special advisors to the President and the Secretary of State are also abolished as of March 1, 2001, unless they are specifically redesignated or reestablished by the Secretary of State as positions in that Department.

This Directive shall supersede all other existing presidential guidance on the organization of the National Security Council system. With regard to application of this document to economic matters, this document shall be interpreted in concert with any Executive Order governing the National Economic Council and with presidential decision documents signed hereafter that implement either this directive or that Executive Order. [signed: George W. Bush]

Mr. HOLLINGS. You will find in there that 11 functional coordinating committees within the council itself, chaired by the National Security Council. Among them are committees on counterterrorism and national preparedness, chaired by Condoleezza Rice, to Advisor to the President for National Security Affairs. You have another committee on counterproliferation and homeland defense, which the President of the United States thought was necessary in February of last year, chaired by Condoleezza Rice. There is another one on intelligence and counterintelligence, again chaired by Condoleezza Rice.

Later we see President's National Security Advisor on the TV saying: We did not get anything specific. In fairness to her, she is an expert in foreign policy. She used to instruct a course, I understand, at Stanford. She has never served in law enforcement or counterterrorism. But it is time to get real. This bill does not directly deal with

the entities that failed. It is about running around, like my Navy friend used to say, "when in danger, when in doubt, run in circles scream and shout."

The administration propose this big bureaucracy. I have 110,000 of them already at DOT. I have been working on transportation security of the airlines, the rails, and the seaports. How are you going to get a department full of midlevel personnel in charge if you cannot get the Executive level, the Presidential level, engaged in active management. I told the President of the United States: Mr. President, I want you to get hourly reports on the homeland security intelligence as you receive those hourly political reports from Carl Rove. He knows what is going on politically in this country. I want him to know what is going on intelligence-wise with respect to homeland security, but we do not have that.

What we have is another finger-pointing agency. As Harry Truman said: The buck stops here. He is the one who brought in the 1947 initiative to reorganize for national security. He did not mind assuming that responsibility.

Mr. President, do you think if you were President that you would depend on the Department of Homeland Security for your intelligence analysis? No, no, that is not going to ever happen. One, that Department is only going to be fed what the President says to feed them. The FBI is not going to tell them everything. The CIA is not going to tell them everything. It is a culture. We have to break down that culture, but the only place we know they are not afraid to tell is the National Security Council of the President of the United States.

The Secretary of the Homeland Defense Department would not even know what to ask for. They do not have any kind of intelligence collection. They do not have the authority or resources to do that. They would create another analysis department, but it will not function properly unless it is fused. There has to be a fusion, an integration, as they said in 1947, of domestic and foreign intelligence so they know where to act. We have read in the newspapers where they are getting their money for terrorism, outfitting Canada and so on.

The PRESIDING OFFICER. The Senator's time has expired.

My time is limited, so I will close with the idea that, we can pass this bill ipso facto, word for word—either bill—this afternoon, and 4 or 5 years from now after they have had a chance to organize, we can have another 9-11. We are not going to prevent it with this particular measure.

Mr. BYRD. Mr. President, I yield 5 additional minutes to the Senator.

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

Mr. HOLLINGS. That is all right, Mr. President. I will yield the time back and come back in on the debate. This is

only a motion to proceed. I work with them. I can tell you the resistance of the FBI talking to the CIA—that is not in this bill—but we have to have a President get them together and make sure information is fused. There is a resistance. We have had meetings on port security. I cannot get the FBI to attend those meetings. I am going to get on Bob Mueller about that because I have his appropriation, but they do not want to get together. They are looking for crime. They are not looking for prevention. They want to catch somebody. When crimes are committed they are called into action. While we hope crimes are never committed, the FBI serves the nation by responding when crimes are committed. We must work to prevent terrorist attacks. That is the new culture, the new role to be taken on.

The President has to play the game of President, be the chief executive. Mr. President, I say to Senator BYRD, in his mind, does he think he would depend on the Department of Domestic Security for making a decision? He is not going to depend on that Department or any other, except for the National Security Council.

There is no substitute for the CIA being on the Council or for the FBI being on the Council, the Attorney General, or the Secretary of Homeland Security. Put him on the National Security Council. Let's begin to emphasize the domestic side of foreign policy and international threats.

That is what has to be done, and it has to be done at the White House. You cannot run all over the country fundraising; you have to go to work. That is one fault with this particular President. I cannot put him to work. I see him out with flags, military people, policemen, firemen, and others. Carl Rove has him. I would like to get hold of him, and we could get this Government going. He has to go to work and bring them in and say: I want to make sure I know what I am doing. And this Department does not help him know what he is doing.

I yield the floor.

Mr. BYRD. Mr. President, how much time does the Senator from New York wish?

Mrs. CLINTON. Ten minutes.

Mr. BYRD. I yield 10 minutes to the distinguished Senator from New York, Mrs. CLINTON.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I thank the Senator. I rise to join Senator BYRD in speaking about our homeland security needs. Our colleague from South Carolina always teaches me something whenever I have the pleasure and privilege of hearing him speak in this Chamber.

New Yorkers particularly owe Senator BYRD a great debt of gratitude because he and his very worthy staff have done a tremendous amount of work to help New York recover and rebuild from the tragedy of September 11.

As we appear today in this Chamber, I cannot help but remark that Senator BYRD has been focused on homeland security from the moment I first spoke with him on September 12 around 7 a.m. after we knew the full extent of the damage, and I was going up to see what had happened in New York for myself. He has been extremely understanding and also very knowledgeable about what it was going to take to make us more secure.

I also thank Senator LIEBERMAN for his tremendous efforts in trying to craft legislation that will make us safer. We are not just doing this for a political exercise or just to reorganize for the sake of reorganizing, but we know there are serious issues to be addressed, some of which Senator HOLLINGS spoke about.

I do support the idea of a Homeland Security Department, but I come today to recognize the seriousness of the issues that should be addressed while we are trying to determine what it is we need to do to make our Government more prepared.

There are a number of issues, and my colleagues have raised quite a few of them, but I want to focus on one particular aspect of our homeland security, and that is the resources that our frontline firefighters, police officers, and emergency responders need to be the soldiers to defend our homeland security. Just as we support our men and women in uniform who are doing a very important job extremely well, from Afghanistan to the Middle East to the Far East, we have to do the same for our local homeland defenders.

I have been disappointed in the disconnect between rhetoric and resources from the administration. We certainly have had many heartfelt and moving moments where words have captured our feelings.

When it comes to providing the resources that our police, our firefighters, and our emergency responders need, I think the administration has fallen short. That was certainly clear over the August recess when the President chose not to sign the emergency designation for the \$5.1 billion supplemental appropriations bill, which included \$2.5 billion for improving our homeland security.

That number did not come out of thin air. It was the result of hearings, testimony, and evidence presented by people on the front lines. A number of people from New York who were in our police department and our fire department, who had been there on September 11, who understood what we needed to be well prepared, came down to set forth a very clear agenda that they hoped the Federal Government would help them meet.

The supplemental appropriations bill, for example, would have given our first responders \$100 million so that police and firefighters would have communications systems that could talk to each other. We found out, tragically, on September 11 that we did not have

that, and New York is not alone in not having what is called interoperability between the police and firefighter radio systems.

There would have been \$150 million in additional FIRE Act grant funding to help fire departments improve their emergency preparedness, and there would have been \$90 million to track the long-term health care of those who responded at Ground Zero, not just so we fulfill our obligation to take care of these brave men and women but also so we can be better prepared to take care of all of our first responders.

I am not alone in thinking the President's refusal to sign the emergency designation was a terrible mistake. The International Association of Firefighters has voiced its concern in very clear, unmistakable language. I know they are particularly passionate about this issue because they lost so many of their colleagues.

In his August 20 letter to President Bush, the International Association of Firefighters general president, Harold Schaitberger, had this to say:

I would be dishonest if I did not convey our anger, concern and growing doubt about your commitment to us . . . No one, not even the President, has the right to pontificate about his or her commitment and respect for firefighters while ignoring our legitimate needs.

With all due respect, support entails more than kind words.

The President said he was exercising fiscal discipline by not making the emergency designation and said that this was, in his view, wasteful congressional spending; that \$5 billion was not an emergency even if it went to the kind of emergency needs and services that we know we are lacking.

I have to respectfully disagree. I think we do face an emergency. We are rushing through this legislation because clearly we think we face an emergency. But the real emergency is not in Washington to reorganize a huge Government department. The real emergency is in the police stations and the firehouses and the emergency rooms of America. That is why I am concerned that when the Congress goes through the kind of process it did to arrive at a need for \$5.1 billion and it is totally disregarded, then why on Earth would we want to give up congressional oversight and authority in setting the agenda to protect our country?

I believe it is imperative we do everything we can in setting up this Department to get the money to where it needs to go. We have to get the dollars where the responsibility rests.

When a disaster occurs, whether it is man-made or accidental, we do not call the White House. We do not even call the Senate or the Congress or the Governor's office. In most instances, we call 911.

It is clear the kind of support we need for direct Federal homeland security funding needs to be a part of any homeland security defense program.

We have a heavy responsibility in Washington, not just to talk the talk

but to walk the walk with our first responders. We have to give them the equipment and the resources and the training they need. According to the U.S. Conference of Mayors, since September 11 cities have invested almost \$3 billion in added security costs for equipment, overtime, and training. As of this date, with the exceptions of New York and Washington, DC, which suffered so grievously on September 11, not one city has received a single dime to cover these additional costs.

Some bioterrorism funding—about \$1.1 billion—has been dispersed to the States, and that helps, but that does not answer the need that our firefighters, police officers, and emergency responders have.

I think it is clear, if we are going to be debating this Department, let us talk about the real needs that are out there. We have to be sure we follow the clear example that has been set by communities in trying to shift funds to meet their emergency needs. We have to help them shoulder these additional burdens. Clearly, the Federal, State, and local governments are at partnership in preparing, in being responsible, and then finally in responding. But if they do not have the resources, they cannot do the job.

So as we debate this Department, let us join with the people on our front lines who understand what they really need—groups such as the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties. Let us support direct Federal funding to local communities. Let us do it in the form of a community development block grant. Let us follow the money where it needs to go.

From my perspective, it is imperative we debate resources, not just reorganization. It would be a cruel deception to pass something called Homeland Security Department reorganization, which we all know is going to take years to untangle to try to get focused and to be effective, and not provide the dollars that our frontline defenders need.

I ask unanimous consent for 2 additional minutes.

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

Mrs. CLINTON. This is compounded because the administration's budget calls for eliminating money that would go to our police, firefighters, and local law enforcement; eliminating more than \$500 million from the COPS program; eliminating entirely Federal funding for hiring new so-called COPS officers; eliminating and cutting other essential programs such as the local law enforcement block grant. This makes no sense to me.

It is fine to have this abstract, theoretical, philosophical, even constitutional debate, as important as it is—and I believe with all my heart it is a critical debate—but let us not kid ourselves: If we do not get resources where it counts, we are not going to be better prepared, we are not going to be better

defended. I hope as we debate homeland defense, we also recognize the obligation we owe to those men and women who would answer the call today when it is sent out.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank Mrs. CLINTON, the distinguished Senator from New York, for her very appropriate, meaningful, and forceful remarks in connection with this matter and in connection with other matters she has addressed. And I thank Senator HOLLINGS, the chairman of the committee which has jurisdiction over transportation, the chairman of the appropriations subcommittee which has jurisdiction over the State, Justice, and Commerce Departments and other agencies; and thanks to Senator REED for his excellent presentation.

This time is going on my time, which is all right. I am prepared to yield to the distinguished senior Senator from Washington, who sits on the Appropriations Committee and who presides over the Transportation Subcommittee of that committee with a high degree of dignity and poise, and someone who always brings to the committee's attention and to the Senate's attention the length and breadth of her great knowledge that she acquires through the holding of hearings, through the study she gives to the budget requests that come before the committee. I yield 15 minutes to the Senator.

The PRESIDING OFFICER (Mr. JOHNSON). The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank the Senator from West Virginia for his leadership on this issue and for yielding me the time today.

On June 6, President Bush addressed the American public, informing the public he had changed his mind. After months of rejecting just such a proposal, he now saw the benefit of organizing a new Department of Homeland Security. His aides had handed him a plan. To his eyes, it was a good plan and one that should be implemented.

However, something else happened that week as well that happens all too frequently in America. The Coast Guard, one of the agencies that would be merged into the President's new Department of Homeland Security, was performing search and rescue operations across the Nation.

In my home State of Washington, the Coast Guard was dispatching helicopters and motorboats throughout Willapa Bay to search for three missing Fort Lewis soldiers. On the evening of June 1, their 20-foot pleasure craft washed ashore in Bay Center, WA. Unfortunately, those soldier's bodies were recovered the next morning.

As I look today at the President's request, I am very mindful of the impact it could have on the Coast Guard's ability to carry out other missions like search and rescue.

We need to be responsive to the President's request. We need to give this and future administrations the tools they need to better secure America. However, we cannot sacrifice the critical safety work of the Coast Guard for the incomplete plan the President's aides drew up in the basement of the White House.

I rise today because I am deeply concerned that in our rush to do something about homeland security, we may well overlook the consequences it will have on the safety and security of all Americans. Frankly, given what I have seen so far, I have very real reasons for concern. Of course, I believe, like all my colleagues, that we need to do everything we can to make sure our Government and our military can meet the challenges since September 11. We have to focus considerable energy and resources on addressing those challenges.

Those who want to harm us will look for new ways to exploit our weaknesses. We have to do better. The world has changed. We must adapt. But we must balance the needs of our country.

In my role as chairman of the Appropriations Subcommittee, I have worked very hard to provide the resources to meet our needs at our borders, at our seaports, airports, and throughout our Nation's transportation infrastructure. Often, that has meant pushing this administration to support the necessary funding, sometimes without success.

We are moving forward, and we are making America more secure. The Senate has followed a deliberate process, and the leadership of Senator BYRD has been critical to this endeavor. He has made sure that we move forward responsibly to meet the new challenges facing our Nation. But let's face it, it takes a while to get even the simple things right. I have been working with the Transportation Security Administration for months on airline security, and even the smallest things have taken a while to work out.

Look at what we face at our northern border. It took many months and we had to put a lot of pressure on this administration just to get the National Guard deployed at the northern border to fill the gaping holes in our border security left by years of negligence. It then took many more weeks to get our guardsmen armed, secure. Securing our border is essential, but so is ensuring the efficient flow of people, goods, and services across our border with our friends in Canada. Canada is our Nation's largest trading partner. Many millions of people in both countries depend on that trade for their livelihoods. If we do the wrong thing, the loss of jobs in our border communities will be devastating.

How will the Department of Homeland Security, envisioned by the President, balance the complexity of those competing needs of the American people? We do not know. We are supposed to trust this administration.

Now the administration wants to rush through a homeland security bill which was drawn up by a handful of White House aides. It is the largest Government reorganization since 1947. Look at what has happened in the House since the President submitted his proposal. The standing committees looked at the proposal and saw major problems. The House Transportation and Infrastructure Subcommittee unanimously voted to keep the Coast Guard out of that new Department. Based on their expertise and their research, the standing committee saw the clear need to maintain the Coast Guard outside of the new Department.

What happened? The select committee ignored that recommendation and put a rubber stamp on the President's original proposal. In fact, several times the standing committees made constructive improvements to bills, only to see their recommendations rejected by the select committee.

The administration wants to rush this proposal through Congress. Anyone who raises a legitimate question is immediately derided as "trying to reserve turf."

This is not about turf. It is about safety. It is about a young Coast Guardsman who climbed aboard foreign vessels in the open seas, not knowing what they may find. It is about TSA security agents who are trying to make sure that passengers attempting to board our planes do not pose a security threat. I am proud to work to try to provide them with some job security just as they work hard to protect our Nation's security.

These are real questions that need to be answered. This afternoon, I raise some of those questions because there is a lot at stake for the people I represent and for every American. I want to make sure we do this right. So far, I have not gotten the answers I need.

I have two major concerns. First, we have not yet figured out how to fulfill our traditional missions and the new security missions at the same time. If we combined all these various agencies into one massive Department with a primary mission of homeland security, how are we going to meet the traditional needs across the board?

Let's look at the Coast Guard, just one agency. Since September 11, the Coast Guard has shifted resources away from traditional missions to homeland events. That is an appropriate response, but it comes at a cost. Unfortunately, it means the Coast Guard is spending less time interdicting drugs and illegal migrants, enforcing fishery and marine safety laws, and protecting our marine environment.

But the traditional missions have not disappeared. We still need the Coast Guard to keep drugs and the illegal migrants off our shores. We need them to protect our environment. And we need them to protect the lives of our fishermen and the integrity of our fishing grounds. Frankly, even without the new security needs, we have a long way

to go to meet even those basic missions.

I am concerned we are rushing into a new organization that could compromise our ability to meet all the challenges we are facing. What will be the commitment from the Department of Homeland Security to protecting our marine environment or enforcing our fisheries laws or conducting search and rescue operations? If the administration continues to play budget games and underfund the Department, as it has done so far with the TSA, will the scarce dollars go only to security and not to traditional missions?

Right now, we cannot even get the basic facts. I would like to know how much of the current Coast Guard budget is going toward homeland security. On July 9, the Coast Guard Commandant said 40 percent of the Coast Guard's operating budget goes to the missions of the new Department. A few weeks later, on July 30, the Commandant said almost 50 percent of the Coast Guard's budget went to homeland security. That is a difference of at least \$350 million. That number matters because the boats and resources used for homeland defense are often the very same ones needed for search and rescue and other missions.

I am not raising this to criticize Admiral Collins. He is doing an excellent job. I work closely with him. But it shows how difficult it is to get even the most basic questions answered as we look at this new Department. The answers matter because the vast majority of Americans live in coastal States or along the Great Lakes or inland waterways, and every American is impacted when the Coast Guard slows down its work stopping illegal drugs. To include the Coast Guard in the new Department will impact the lives of millions of people. I think we need to explore these questions closely. Simply put, we have not done a good job meeting our traditional missions and security missions at the same time. I would like to know how one massive Department, focused primarily on security, will help us meet the needs out there.

Second, I am very concerned about accountability and authority over everything from the staff of the new Department to its budget. The administration has asked for unprecedented power and control over this proposed Department. Some of the demands for power over workers really trouble me. The President wants changes in the personnel rules so he can have flexibility. Is the President suggesting that today's unionized border agents are not doing an adequate job or that today's unionized Customs officials are not responding to new mission requirements in a timely manner? If that is what he is suggesting, then he is wrong.

I have been on the border. I have met with the Border Patrol and Customs agents. These professionals are our sons and daughters, they are our neighbors, they are our friends, they are our husbands, and they are our wives. They

serve the American people selflessly, often jeopardizing their own health and safety. I do not think those who serve in the Department of Homeland Security should be second-class citizens, given a lower level of rights and respect.

In addition to dramatic new control over workers, the administration wants the power to move the money around without congressional input. Let me tell you, given what I have seen so far, this is pretty scary news for families in Washington State. Right now, as a United States Senator, I can fight to make sure the needs in my State are being met. As elected Members of Congress, we know the needs in our communities and we are accountable to our voters. But the administration now wants accountants in the Office of Management and Budget to decide what is important to the people of my home State of Washington. If that happens, my constituents will lose out at a cost to their safety and security.

Let's just look at what happened with the supplemental appropriations bill. Under the leadership of Chairman BYRD, the Appropriations Committee held unprecedented and comprehensive hearings on how to best meet our obligations to the American people. We spent countless hours hearing from national and local experts. We passed the funding to meet the needs before us. Congress passed that funding, but then the President eliminated more than \$5 billion of it. With a wave of his hand, over the August break, the President eliminated funding that we here in Congress considered critical, after many hours of hearings, to protecting the American public.

He eliminated \$11 million from Coast Guard operations. The President eliminated, with a wave of his hand, \$262 million for critical Coast Guard procurement, including funding for coastal patrol boats for our security. The President eliminated \$150 million for our Nation's airports, as they are working so hard to meet the December deadline for installing explosive detection devices. And the President eliminated \$480 million from its already shortchanged Transportation and Security Administration.

The Office of Management and Budget has not been a good advocate for the people of my home State of Washington. Given that record, I am very reluctant to give OMB dramatic new power over the safety and security of my constituents. The OMB originally blocked the Coast Guard's desperately needed improvements to the marine 911 system. When they brought it to their attention, the OMB changed its policy, but under the President's plan there is no way for us in Congress to address the arbitrary decision made by the OMB. Granting the President dramatic new authority is not just a bureaucratic exercise. It has real consequences for the people I represent. I take that responsibility very seriously.



If we are not going to figure out how all the functions are going to be performed and we can't tie money to functions, this reorganization may consign many functions to death, as we saw when the President eliminated \$5.1 billion in homeland security funding.

In closing, we need to better define the missions of the various agencies, and we need to make sure they continue to fulfill their traditional missions. It is essential for our economic security and our physical safety. The House bill does not strike a balance, and we have to do better. We need to really understand the consequences of this proposal and ensure that it will actually increase our homeland security and not jeopardize our citizens in other ways.

I believe this has not been thought out enough and we should certainly not race to put a rubberstamp on such an incomplete proposal. I think every Senator feels pressure to do something, anything, about homeland security. But it is much more important to do the right thing.

I look forward to having a good debate about the new Department of Homeland Security. There are a lot of serious questions, and I look forward to hearing some serious answers.

THE PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I thank the very distinguished Senator who is a member of the Senate Appropriations Committee, as I have already indicated, for her exceedingly incisive remarks which reflect the high dedication that this Senator always brings to her work. I personally appreciate it, as the chairman of the committee. She is a fine member of that committee, and she has lived up to those—and far better—encomiums than I have been able to deliver today.

How much time does the distinguished senior Senator from New York wish to have?

Mr. SCHUMER. Will 15 minutes be all right?

Mr. BYRD. Let's try 15 minutes and hope that will do the job.

Mr. SCHUMER. I thank the Senator. Before my friend from Washington State leaves the floor, I want to thank her for her leadership on this issue. I particularly thank our distinguished leader, the senior Senator from West Virginia, for his leadership on this issue.

The Senate, at certain times, has an important role—at all times it has important roles, but there is an important role that it has now, and that is for the Senate to be, of course, what one of the Founding Fathers called the cooling saucer. If there was ever a time where there was a need for that cooling saucer that the Senate should be and has been through its history in its finest moments, it is now. That is because we face a whole new challenge in these United States, a challenge that says every one of our citizens is on the front line.

This new war on terrorism means that small groups of bad people can do real damage in our homeland. Until 9/11, this was something that was unknown to us. There were battlefronts and there was the homefront, but now the homefront is the battlefront, and the battlefront is the homefront and that demands dramatic and significant changes in our Government.

If the senior Senator from West Virginia were not here, we probably would have just rolled over and we would not have had the kind of debate we are having.

He knows his history, whether it be of the Roman Senate or of the U.S. Senate or all the various Senates in between. I was going to ask him—because my family and I just visited Venice—about the Venetian Senate, to see how that compared. I didn't even know Venice had a Senate until I visited, but we will get that history lesson at another time. We have more pressing issues now.

The Senator from West Virginia is bringing the Senate to its best. He is not being obstructionist. He is not saying no. He is simply saying not to rush on such a major piece of legislation that is going to involve the most dramatic reorganization of the Government in history, on a major piece of legislation that is called on to defend us in brand-new ways.

We no longer just have the battlefront, but we have the homefront. My citizens from New York believe they are on the battlefront. They walk into a subway car and they worry what might happen. A plane flies overhead and they worry what might happen. They look at a reservoir or powerplant and they worry what might happen. This is not a time to rush things through because the very safety of our citizens is at stake.

When government was founded, when men and women got off their knees and founded government, it had two purposes: To protect from foreign invasion and keep the domestic tranquility. For the first time, those two issues were combined.

A lengthy and worthy debate of the Senate is what is called for and the senior Senator from West Virginia, Mr. BYRD, whom we all admire so, has summoned the best in us and asked us to do that. I am proud to get up here and ask for that.

I would also like to praise my good friend from Connecticut. He has put together an excellent piece of legislation that talks about the Senate's prerogatives, not just today but as we go forward. It says a single man, albeit elected, the only man elected by all the people—the only person elected by all the people, so far, the President of the United States—should have some power. But this is not what the Founding Fathers intended. He should not be allowed to take one from one agency and put it in another. He should not be allowed to move employees from one place to another without the approval of the Congress.

I regret to say that the House moved all too quickly. I am glad Senator LIEBERMAN and his committee have had a chance to improve on the House legislation, and to improve on it in a very significant way in major areas that the Senator from Connecticut has outlined.

What I am saying today is that we have to go beyond that as well and address some of the substantive areas of security—not simply how we reorder the Government and rearrange it, and not simply the balance of power between the President, the Senate, and the House, which is very important and worthy of debate—Senator LIEBERMAN has put his oar in the water on that one and given it a powerful stroke, if we pass his proposal—but also to debate some of the substance of homeland security. I fear that if we simply rearrange the agencies and run away from spending the extra dollars we have to spend to make our homeland more secure, we will have not done the full job. That is why I feel so strongly about having a continued debate.

Let me mention a few areas where I have had some expertise in that substantive area. No matter what you do about rearranging and putting a department here and a department there, we will still not be secure unless we delve into those departments.

One which I am going to touch on briefly is a computer system throughout the Justice Department. Recognizing that we are not reorganizing the FBI or the CIA, let me focus on the areas where we are, such as the INS. Our computer systems are totally backward. We had a hearing in my Judiciary subcommittee which has oversight over the FBI where we showed that the computer systems of the FBI cannot search for two words. They can search for the word "flight" and for the word "school," but they cannot search for the words "flight school." Something is dramatically the matter. The INS computers—we are moving the INS around—are just as bad, and maybe worse. Until we update those computers, all sorts of bad people with bad intentions will be able to get into this country even though another part of the Government knows they are bad. We should be addressing that problem when we are doing a homeland security bill.

Then let me talk about the issue that is of greatest concern to me, which is, frankly, the issue that seems to be of great concern to our President, and rightfully so. To me, the worst danger I can conceive of that could befall us in this war on terrorism is that a terrorist group could smuggle a nuclear weapon, or a few, into this country and detonate them. As horrible as 9/11 was, as aching as my city and State are, it would pale before the damage of a nuclear explosion in downtown New York, or downtown Chicago, or downtown Houston, or downtown Los Angeles, San Francisco, Boston, Kansas City, or anywhere else.

Yet right now, if, God forbid, a terrorist group should get hold of such a nuclear weapon either by purchasing it from the few powers that have them that we are worried about—Pakistan, Russia, and, down the road, Iraq, if they develop enough U-238—that weapon could be smuggled into this country, say, on one of the large containers that are unloaded from our ships or brought through the borders—Canadian and Mexican—on trucks, with virtually no detection. What a surprising thought. It is no longer that a missile would deliver such a bomb or that a plane would deliver such a bomb but, rather, that it would come across our border at ground or water level. That is a frightening thought.

The good news is we can do something about it. The good news, when you talk to the scientists at Brookhaven National Lab out on Long Island or Argonne Lab in the suburbs of Chicago, is they say we could develop a device that could at a distance of 40 or 50 feet detect nuclear weapons, if they, God forbid, should be smuggled into this country, because nuclear radioactivity involves gamma rays which can pierce all but lead. To deal with surrounding the bomb in lead, you can just use an x-ray detection device. The x ray would detect the lead. The problem is, they have the technology to do this, but it is only done in lab conditions in cyclotrons and atom smashers.

We need it to go through every container that comes into America. Right now, the only way you can detect radiation is through a Geiger counter. Unfortunately, a Geiger counter has to be placed maybe 3 feet from the radioactive source. You can't go into every one of these big containers with a Geiger counter and push it up against every crate—There are probably 30, 40, or 50 crates in each container; there are hundreds of containers on these ships and thousands that come across by truck—without bringing commerce to a standstill.

The alternative is to develop a device that would do this 40 or 50 feet away, and then install it on every crane that either loads or unloads a container bound for the United States, or that is here in the United States, and put it on every toll booth for a truck that goes over the Canadian border or Mexican border. The cost of developing this device is probably about \$500 million, and then probably another \$1 billion to install it.

The good senior Senator from Virginia, Mr. WARNER—obviously not of my party—and I have legislation that would begin to do this, that would start the research.

For the love of me, why can't we get support for this? Why isn't the White House supporting this? We are very worried about Iraq producing nuclear weapons. We should be. But why aren't we making our homeland secure from the delivery of those nuclear weapons? Maybe it won't be Iraq. Maybe it will be Iran. Maybe it will be North Korea.

Maybe it will be someone else we can't even think about.

I think we should be able to debate that proposal on the floor of this Senate—not a year from now but now. I feel the urgency of this. The safety of our citizens is at stake. If it takes an extra day or two, so be it. That is the role of the Senate.

Why doesn't the White House get behind this kind of proposal? For some reason, they won't. I think it is because they don't want to spend the money, as amplified by the recent almost virtual pocket veto of the \$5 billion that was part of the appropriations bill. But I will bet if you ask each American if they would spend \$1 billion to prevent nuclear weapons from being smuggled into our country and the worst kind of catastrophe imaginable to befall us, they would all say yes. If asked, my 99 colleagues would say yes.

That is the kind of thing we are trying to do here—not be obstructionists. The Senator from West Virginia, as the leader of our band here, has made it clear he doesn't want to be an obstructionist. The Senator from Connecticut has made it clear he believes we have to do things to improve the legislation.

I ask that we continue to debate this legislation. I understand we have time constraints. Those are real. I understand that. I understand we cannot debate this bill for 3 or 4 months right now. But we don't have to have an artificial deadline that it must be finished by next week. If we think that deadline is needed, let us stay in session, go in early, and stay in late until the major amendments are dealt with. I am confident my colleagues from Connecticut and Tennessee will deal with those amendments in a fair way. They are not trying to say it is their way or no way. In fact, that is why we have bills, and that is why we have them debated. But the reorganization of Government agencies is an important issue. I agree with it. I am supportive of it. But I do not think it is the only issue facing homeland security.

And for our President—and I respect him and repeat that every New Yorker owes him a debt of gratitude for being so helpful in the \$21 billion this Senate so generously voted for and the House voted for—but when he says the Senate is getting in the way, that the Senate better pass his bill his way, not the way I would want or the Senator from Connecticut would want or, in fact, the Senator from Tennessee would want, he is not being fair, not just to the Senate but to the American people because we do have a crisis. It is a slow crisis; it is an insidious crisis.

Unfortunately, for politicians, the incentives are backward; in other words, we all love to allocate money, build a school, and get up there and say: Here is a school. But what is our goal with homeland security? What do we want to happen? Nothing. We are very successful if nothing happens. And that provides negative incentives or perverse incentives for the political process. That is the real worry.

If we were to put \$3 billion into the northern border, if we were to put \$1 billion into the INS computer system, if we were to spend \$1 billion to—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SCHUMER. Mr. President, I ask unanimous consent for 30 additional seconds to finish my thought.

Mr. BYRD. Mr. President, I yield the Senator 1 additional minute.

Mr. SCHUMER. I thank the Senator.

If we were to spend another \$1 billion on nuclear weapons, I think it would be worth it. I think the American people would be for us. I may be wrong, but at least I would like the chance to debate and vote on issues I consider to be urgent, pressing needs for my constituency in my State that I love so, and for the people of the United States, for the country I love so.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Senator from New York for a very thoughtful statement.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from California, Mrs. BOXER, be recognized at 5 p.m. for a period of 10 minutes, out of my time.

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

Mr. BYRD. Mr. President, the President wants the Congress to grant the administration the authority to write its own civil service system, regardless of what has been written in current law, that would apply only to Federal workers within a new Department of Homeland Security.

As I have expressed before on this floor, I am concerned that these changes mask the administration's larger hidden agenda, an agenda that would have the Federal Government function more like a big corporation. We all certainly ought to be concerned about that idea, given our recent experience with the inner workings of big corporations.

I come, Mr. President, from the coalfields of southern West Virginia, not from a corporate boardroom. So I approach this with a different perspective than the administration, quite obviously. Before I would ever vote to approve a homeland security measure, I would want to know more about the working conditions of its prospective employees. Will the employees who currently enjoy collective bargaining rights continue to enjoy those same rights at the new Department? Will these employees have complete whistleblower protections?

Before I vote to approve a homeland security measure, I want to know about the pay system. How will the payroll systems and personnel systems be merged into the new Department? How would the special pay rates, already in existence at the separate

agencies, coordinate or be replaced by a pay system if one were to be implemented? What will be the hiring procedures? What will be the firing procedures in this vast new order?

Presidential spokesman Ari Fleischer says these new procedures are needed to enable managers to fire workers who drink on the job. Would they also be able to fire workers because they join a union, because they vote Democratic, because they have red hair or no hair or lots of hair or white hair?

The administration argues that the Secretary for Homeland Security will require significant flexibility in the hiring and firing process because, for example, according to the administration, existing due process and appeal rights make it impossible to fire or demote Federal employees who are poor performers.

But this and other claims are simply not true. A report by the nonpartisan Partnership for Public Service recently stated:

[W]hat is missing from the current debate . . . is the institutional experience government has accumulated with Title 5 modifications that have already successfully allowed government agencies to emulate high-performing workplaces—without compromising merit principles, including protections against politicized personnel decisions.

Mr. President, the fact is, the administration currently enjoys broad flexibilities when it comes to the Federal workforce. A report by the Congressional Research Service points out:

Executive branch departments and agencies currently have considerable flexibility to perform personnel functions in such areas as recruiting, hiring, compensation, promotion, training, and retention. The extent to which the departments and agencies are using the flexibilities is unknown.

“Unknown.”

One of the most important protections granted by the civil service system, that could be eliminated under the President's proposal, is for whistleblowers. Remember Franklin's whistle? Remember the story about Benjamin Franklin's whistle, that he paid too much for his whistle? I am talking about whistleblowers, just now.

The day the President made the announcement of his newfound support for a Department of Homeland Security was the very day that an FBI whistleblower, Coleen Rowley, was to testify before Congress on the embarrassing failures of that agency leading up to the September 11 tragedy. It is clear the administration hoped to limit coverage of that hearing by offering its secret plan that was hatched in the bowels of the White House to establish a new Department of Homeland Security, on the same day—a plan, I might add, that would not provide its employees the same level of protection with regard to whistleblowers as that FBI agent enjoyed that day.

Whistleblower protections are essential to protect Federal employees

against managerial reprisals for lawfully disclosing information they believe demonstrates a violation of law or mismanagement of authority.

The President seemed to agree with this principle when he issued an executive order on January 20, 2001, that required all Federal workers to obey their duty and report fraud, waste, and abuse.

Excessive secrecy enforced by repression can threaten national security by covering up Government breakdowns that sustain unnecessary vulnerability to terrorism. An example from the post-September 11 period provided by the American Federation of Government employees is illuminating. In testimony before the House Select Committee on Homeland Security, American Federation for Government Employees President, Bobby L. Harnage, Sr., provided the following story, and I quote from his testimony:

In the aftermath of the September 11 terrorist attacks, two union officers of the National Border Patrol Council—border agents Mark Hall and Mark Lindenmann—went on the NBC Today Show and testified before Congress to speak out against security on the United States northern border. They said that despite all the talk, no new agents had been placed on the northern border and that agents were not making criminal background checks on people caught entering the United States illegally. These statements prompted the Immigration and Naturalization Service supervisors to propose to summarily fire the agents, stating in internal e-mails that “the President of the local union deemed it necessary to independently question our readiness in a public forum,” that “managers must take a stance which bears no tolerance of dissent,” and that managers must “view resistance from rank and file as insubordination.”

Well, this is what employees are often up against when they speak out against the company line, even when the company line involves the security of the United States.

Without knowledge that the union would represent them and that an impartial whistleblower hearing process was in place to review subsequent INS actions against them, we can be sure that they never would have said a word and Congress would never have heard the truth of what was really happening on the northern border of the United States.

Before the August recess, Congress overwhelmingly approved state-of-the-art corporate whistleblower protection as an encouragement for private sector workers to defend America's financial markets. Our homeland security requires similar rights for Government workers to make disclosures in defending American families against terrorism. Without full whistleblower protections in place, Congress would have had a difficult time in the past learning of the problems associated with governmental reorganizations, and there have been some serious problems in our recent history.

As a rule of thumb, it is important to remember that Federal Government re-

organizations have been difficult to accomplish. As James M. Lindsay, a senior fellow at the Brookings Institute, recently said:

History suggests we never get reorganizations right the first time, and this is an especially ambitious proposal. A lot of follow-through will be needed to make it work.

Recent experience in providing the executive branch with flexibility in establishing a new Government agency holds great lessons for what we are being asked to do today. This flexibility failed in an identical experiment at the Federal Aviation Administration in which Congress gave the flexibility to replace merit system and collective bargaining procedures with so-called superior management alternatives. The result was chaos. Personnel disputes rose sharply, morale plummeted, and the mishmash of employee organizations sprang up to replace coherent labor-management dialog in disputes from all directions.

In the year 2000, Congress learned the obvious lesson and restored the merit system's due process procedures and remedies. What about the new Transportation Security Agency that was created last year? Congress reluctantly agreed to the administration's request for exceptions to the civil service system for employees at the new agency because they wanted to streamline personnel procedures to allow faster hiring and provide for flexibility and shifting people among jobs as the new agency was established. That sounds familiar, doesn't it?

The results have been mixed at best. Recall that just a few short weeks ago the administration fired its hand-picked director of the new Transportation Safety Administration, John W. McGaw, only 6 months after the agency was established. Creating an effective and efficient Department of Homeland Security and retaining the basic rights of Federal workers are not mutually exclusive.

I am not here to say our civil service system is perfect, but I do say that using the security of the United States and the rights of Federal workers as a bargaining chip to further a political agenda is simply unacceptable. What an irony that this administration is using an attack by terrorists who have no respect for the rule of law or the rights of workers as a justification for us not to respect our own laws or the rights of workers.

So I am grateful for this opportunity today to speak on this issue. I am grateful for the opportunity for the Senate to address the issue. I ask the distinguished Senator from Wyoming if he wishes to speak.

Mr. THOMAS. I do.

Mr. BYRD. I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, I want to comment for a few minutes on the subject that is before the Senate. I am not a member of the committee. I have not spent as much time on it as have others. But I think there are probably different views and we have heard the same views now for quite a long time. Perhaps it would be well to talk a little bit about some of the other points of view that might be available and might be discussed later. I understand this is not actually on the issue but, rather, on a motion to proceed thereto. It is a very important issue, of course.

Nothing could be more important than homeland security. We have talked about it and we continue to talk about it at great length. The fact is, it is a high priority, certainly, for all of us to protect the homeland. In order to do that, we need to have a homeland security department with the most effective management that we can have, the most effective employees, and a system that works as effectively as possible. So we support plans that protect workers through civil rights, equal opportunity guarantees, whistleblower protections, and all those fundamental rights which will be kept. Accountability is also a must, and giving the department flexibility in hiring and firing and creating a powerful deterrent for others to ensure they don't engage in behavior that would endanger homeland protection.

The bill now before us will compromise national security and place more importance, frankly, on bureaucracy and bureaucratic security than on national security. That really is not the issue here.

This is not a new issue. The President has the authority in every other agency, but there seems to be an inclination to be able to roll it back for the Department of Homeland Security. Under this bill, the President would have more flexibility to make decisions—or should have—for reasons of national security, and for HUD, for the Department of Education, he would have more than he does under this proposal. That seems strange to me. This is a proposal that deals with those kinds of emergencies—the things that are changeable—and flexibility needs to be there.

So it seems to me that without some basic flexibility to manage, freedom to hire the right people, fire the wrong people, that national security would be at risk and not be secure. Here are some examples. The Senate bill prevents the President from holding services accountable. Last month, two America West pilots showed up to work drunk. They showed up on Monday and were fired on Tuesday. If they had been INS personnel, it would have taken 18 months—540 days—to be held accountable. These are the kinds of issues with which we have to deal. This is not the normal effort. There is a bottom line that the President does need to have sufficient flexibility. After all, it is the President and the people in the execu-

tive branch who are going to do the job. What we do is give them the opportunity and the flexibility to do it.

Certainly there are controls. These controls will not be gone. But we have to provide the opportunity to the person who will be responsible for carrying out this role. It is easy to sit here and talk about all the restraints we should have because we do not have to do that job; someone else does.

The Senate bill does not provide the new Department budget transfer authority. Without transfer authority, if intelligence indicated terrorists were developing a new type of biological weapon, the Secretary would be unable to transfer funds from one division to another to acquire additional medicines or vaccines or improve detection equipment. It does not provide the flexibility to attract, hire, and reward good performance or hold poor performers accountable. That is what we need to do in all of Government, but more particularly in this Department where they are going to face issues they have never before faced.

The Office of Personnel Management reports it can take up to 5 months or more to hire a new Federal employee and 18 months to terminate. If one is not getting the job done, is this what we want in homeland defense? I do not think so.

The bill does not provide for reorganization authority. The Senate bill will prevent the new Secretary from consolidating inspection work of the Customs Service, Border Patrol, and Agriculture inspectors at our ports of entry, leaving the current seam between these activities. Frankly, that has been the weakness in our system since September 11—there is information here, there is information there, and we need to bring it together in a seamless way, and that is one of the strengths and one of the purposes of this whole operation. Yet this bill will not allow that to happen.

It will strip the President of existing authority to act to preserve national security. The Senate would take away the President's existing authority to exempt agencies in the new Department of collective bargaining requirements where national security requires it. Ever since President Jimmy Carter used this important national security authority in time of war—we are in a war of terrorism. To weaken the President's authority seems to be contradictory of where we are or where we need to go.

Certainly, there needs to be great discussion, and I admire the emphasis and effort that has been made. I certainly respect the judgment everyone brings to this Chamber, but there are differences of view, and they ought to be reflected, and they will be reflected, in the bill. We are getting the impression today, however, that there is nothing right about the bill, that the way the President has requested it is all wrong, and that cannot be the case. There has to be a balance, and I am

sure there will be an effort to strike a balance.

Of course, we have to recognize rules that do protect Federal workers. And, indeed, there should be rules. They represent the best in America, and they deserve strong civil service protections under the President's plan. Employees of the new Department will continue to be protected by important civil service laws, rules, and regulations that protect them against discrimination on the basis of age, disability, race, color, or religion. Those protections will be there, protected by the Fair Labor Standards Act, the Equal Employment Opportunity Commission, the Social Security Act, the Civil Rights Act, the Hatch Act, Government ethical standards, and they should continue, and indeed they will.

I know this is a very important issue. I know also that many Senators have worked very hard and are seeking to do what they believe is best to put together this homeland defense bill. But I do believe there has to be some recognition that this is different, that we are asking the executive branch to carry out a job that is unusual in a different time. It has to have some flexibility so that the decisions to accomplish what it is all about can be made. That is what the President and those who have put together this original proposition are for.

A letter has been written by the former Governor of Pennsylvania that lays out the need for these flexibilities very persuasively. I happen to agree. Certainly there are limits to what we want to do, but we do want to make this a successful effort and give those who are in charge of handling it the flexibility to make it work. I hope we will balance this bill.

Mr. President, I appreciate the time. I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I know Senator BOXER is expected around 5. I would like to speak for a few moments until then.

I thank my colleague from Wyoming for his statement. To pick up on what he said, that one might get the impression listening to the debate that there was not anything good in this bill—specifically in the President's proposal on homeland security—there is a natural way, when amendments are filed, to focus on where we disagree, where the amendment disagrees with the underlying bill. But there is a big iceberg under the surface on which there seems to be disagreement. On that there is great agreement. In fact, I believe, though it is hard to quantify this, that more than 90 percent of the bill the Governmental Affairs Committee approved in late July is exactly the same as what President Bush desires. It is quite similar to the bill the Democratic majority on the committee adopted by a 9-to-7 vote in May which, in turn, is similar to the proposal of

the commission headed by our colleagues, former Senators Gary Hart and Warren Rudman.

There is enormous agreement on what I would say are the guts of this bill and the guts of a new Department of Homeland Security: Coordinate the disparate agencies that are now disorganized, overlapping, creating gaps and vulnerabilities that terrorists took advantage of on September 11 and will again unless we close those gaps and eliminate those vulnerabilities. We cannot let that happen. Border security agencies are being brought together; emergency response is being centralized, working much more closely with State and local officials; infrastructure protection; intelligence, most important, to create that one place where all the dots come together so that we can see the terrorist plots before they are carried out and stop them; science and technology. Let's use the brain power, the innovation, as the Defense Department has, to make us as successful in the battle to defend the American people at home as those technological innovations have made us abroad in the fight in pursuit of our principles and our national interest.

Most of this proposal enjoys broad bipartisan support. There are a few parts of the proposal right at the center which are in dispute. I understand the President does not support our proposal for a strong intelligence division in the new Department. It is critically important to break down the barriers that existed and still exist, to some degree, between the FBI, the CIA, local law enforcement, and State and local law enforcement as opposed to Federal law enforcement; bring all those dots together on one table so they can see the outline of what is coming and stop it before it happens.

There is dispute from the White House on our national office to combat terrorism because we want the nomination of the director of that office to be approved by the Senate. So these are real disputes related to homeland security.

The dispute that is going on now and the question of civil service rights is not relevant. I hate to see it stand as an obstacle in the path to adopting legislation creating a Department of Homeland Security which, as I say, will give the President at least 90 percent of what he wants in this new Department. In fact, far from limiting the authority of the new Secretary of Homeland Security with regard to the management flexibility that that Secretary has, our legislation protects the existing flexibility in law.

The new Secretary would be able to remove employees for poor performance, transfer employees as needed, reward and give bonuses to those who perform ably. In fact, we add by this legislation to the existing management flexibility that the new Secretary would have because of a bipartisan amendment worked on very hard and thoughtfully by Senator VOINOVICH and

Senator AKAKA which would give the President and the Secretary of Homeland Security new powers to reward employees, attract top talent and reshape the workforce. It is quite an advance.

So far from limiting the management flexibility of the new Secretary, we are increasing it beyond what any other Secretary has today, and we give the administration an open invitation, specifically in the letter in regard to the legislation we are proposing, by requiring the Secretary to come back every 6 months and to offer legislative recommendations.

We specifically enumerate this again on personnel management that emerges from the experience the Secretary has over those 6 months.

We have to remember that the civil service system evolved for a reason. It was designed to create some accountability, to protect the Federal workforce from favoritism, from patronage, from politicization, by creating a transparent framework for a merit-based personnel system. Obviously, it is not perfect. That is why we included these major reforms in the bill we reported out of our committee. But to essentially discard it, as the President's proposal would do, to give the Secretary and the President effectively unlimited authority to rewrite the civil service rules, would be a real step backward.

A lot of this has to do with accountability. Accountability is an important goal in our public life and our public service. When people are being taken from the place where they work now—28 different agencies and offices, the Customs Service, the Coast Guard, the Transportation Security Agency, FEMA—and they are brought into this new Department, I think most managers in the private sector would want to do it in a way that would encourage those employees to believe we are all on the same team and we expect the most from them, we are going to work with them.

By pulling away these civil service protections, I think we are going to have exactly the opposite effect. At a time when the average worker would naturally be anxious about a change of office or status, we are going to hang a sword over their heads that says no more civil service protection; they will lose their rights and, at worst, their job without the right to protest and seek review.

Responding to the Senator from Wyoming, I say he is right, that some of our colleagues have not said enough positively either about the President's proposal particularly, because it is embraced in so much of what the committee will bring to the floor.

There are these disagreements. I hope we can work them out. I hope where they are fundamental, we can put them off for 6 months and do the urgent work, which is to get this bill done.

Let me say a word while I am speaking about items in dispute that I hope

can be put off. This is the question of collective bargaining. I must say I have learned a lot about this. I have not been involved in some of these questions for a while, and I learned that collective bargaining rights were extended to Federal employees for the first time in 1962 by Executive order of President Kennedy and then were embraced in statute in 1978 under President Carter. In both the Executive order and the statute, there was a provision made that reflected, I think, special concerns during the cold war which said that if the President determined that union membership in a given agency or office was inconsistent with national security, the President could remove the right to collectively bargain without giving a reason other than to say it was inconsistent with national security, without any right of review or appeal by the employees who were therefore losing a basic right, which is to join a union.

I do point out that Federal employees can neither strike nor in most cases do they negotiate for their salaries, which are usually set by statute.

I am going to stop for a moment and ask my friend and colleague from Pennsylvania whether he would like to address the Senate on the motion before us.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I had not expected to address the Senate on this issue, but I never turn down an invitation.

Mr. LIEBERMAN. Should I rescind my offer?

Mr. SPECTER. The Senator could, but not after it has been accepted.

Mr. LIEBERMAN. Go right ahead. We both learned that at the same law school.

Mr. SPECTER. Senator LIEBERMAN and I went to the same law school, and I think he knows one can rescind an offer, but not after it is accepted. At that point, it is too late.

Mr. LIEBERMAN. I am pleased to have the Senator have the floor.

Mr. SPECTER. I am glad to see the legislation on homeland security on the floor. This is historic legislation. As the distinguished Senator from Connecticut has said, this is maybe the most important bill that will come out of his committee during his tenure. It is my hope we can move through the bill, go to conference, and have legislation on the President's desk which the President can accept.

One of the key points at issue is the way the analysis of intelligence is going to be structured, and it is my hope that we will be able to take a step at this time on reforms which have long been in the making.

When I chaired the Intelligence Committee in the 104th Congress, I proposed legislation which would have brought under one umbrella the CIA and all of the intelligence agencies. There is on the President's desk now a similar proposal. It would be acceptable to this Senator to have that umbrella control really anywhere, but the

turf wars which are well-known to be endemic and epidemic in this city have prevented that kind of umbrella or overview.

The proposal which I think is indispensable is not to change the operation of the CIA or the FBI or the Defense Intelligence Agency or National Security, but when it comes to analysis, to bring it all together so that the analysts are under one umbrella. I believe that had there been an umbrella prior to September 11, 2001, there is a good chance that 9/11 could have been prevented.

We know by hindsight about the FBI report out of Phoenix, and about the young man who had Osama bin Laden's picture on his wall while studying flight training, as well as other indicia of connections to Osama bin Laden. We know about the application for a warrant under the Foreign Intelligence Surveillance Act of Zacarias Moussaoui, which would have yielded very substantial information about his connections to al-Qaeda. We know about the two at Kuala Lumpur, known to the CIA, but not communicated to the FBI or Immigration and Naturalization Service in a timely way. We know of the information from the National Security Agency on September 10, a threat, that was not translated until September 12. There are other factors at issue here where we could have connected the dots, as the metaphor is used.

This bill is a very substantial undertaking. I discussed the matter on a number of occasions with the distinguished Senator from Tennessee who raises a valid consideration that this bill may be going too far in the sense that it takes in a great deal of territory. It does that. However, the question is, When will it be done, if not now?

The business of consolidating Federal agencies is a Herculean task facing all sorts of obstacles, and it is only the event of 9/11 and the threat of another 9/11 which is a motivating factor to make these enormous changes.

Earlier today I heard the Senator from Tennessee say next year would be time enough to study the intelligence agencies. There is one big problem with that: The Senator from Tennessee will not be here next year. We need to take advantage of his skill this year.

Perhaps almost as important as the skill of the Senator from Tennessee is the momentum which we have. I have offered to give him some tips on his new job. I saw a headline in the paper the other day, "Senator Thompson Demoted to District Attorney." First of all, I do not know that it is a demotion because I have held that position. However, that is what the headline said, Senator THOMPSON demoted.

I was surfing on Sunday. It is hard to surf and not see Senator THOMPSON or Senator LIEBERMAN, or both of them. Senator THOMPSON was in a heated exchange with former Secretary Eagleburger, and then the program was

interrupted for some entertainment. I thought Secretary Eagleburger and Senator THOMPSON were entertaining. They put on a portion of this television show. I wonder how many ex-district attorneys in the Senate turned down that television contract before Senator THOMPSON got it?

At any rate, Senator THOMPSON was sitting behind a big desk in a dimly lit room and two assistant district attorneys approach him. I could not get the gist of it entirely, but I guess the thrust of it was someone in the room was in favor of legalizing drugs. The comment was made: What about our war on drugs? This District Attorney Thompson said: We have to have a war on something in Congress for people to be elected.

It seemed a little cynical for him to turn on his colleagues even before he is on his new payroll. I trust the Ethics Committee would not let him be on the payroll yet, although he is doing those shows.

Back to a serious vein, this is the time to do it. I talked to Governor Ridge after a meeting he had with the President today. I have supplied him with language and I sent a copy of it to Senator LIEBERMAN and a copy to Senator THOMPSON. The President wants to be sure that the President has the authority to continue to work with the CIA as he always has. Absolutely, he should have that authority. He does have that authority. There is nothing we can do in legislation that would change it. The change in the language was made to have the analysis groups under one umbrella, subject to the President's direction to the contrary.

An earlier draft stated the reverse, that the President can direct all of these intelligence agencies to coordinate. You cannot wait for the President to make a direction. He is too busy to do it. The generalization has to be that they will be working together under one umbrella, and they will be coordinating the analysis, but this must be made explicit in statute. If the President wants to change that, of course he can. I do not think he needs that authority in the statute, but I am pleased to eliminate any question about it. It is my hope we can find some common ground on that question.

Washington, DC, has a way of having matters slide if we do not strike while the iron is hot. It is hard to get anything done in Washington, DC, while the iron is hot. However, when it cools off, it is extraordinarily difficult. It has been a long time and many efforts have been made to bring these agencies together. It is a limited juncture to call on the analytical sections to be under one umbrella.

Homeland security will do a lot in response to another 9/11, but if that happens, it is really a very sad situation. Ninety-nine percent of our effort needs to be made to prevent it. If we have to respond to another 9/11, we are in deep trouble. Maybe something even more serious may occur—not that 9/11 was

not serious enough, but it may involve weapons of mass destruction. Who knows what it may involve. We have a very heavy responsibility to do everything we can to prevent it. When we look at what was known before, with the dots there, and the possibility of putting them together, that is what we have to work toward.

I have worked a lot with the principals on this issue. I had the opportunity to serve on the Governmental Affairs Committee. I know the work of Senator THOMPSON, who was chairman, and Senator LIEBERMAN, who is now chairman. We have structured this to accommodate all of the competing interests.

I think it will probably be a long day before Senator LIEBERMAN will make an ex parte invitation for me to speak again. I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Connecticut.

**Mr. LIEBERMAN.** I do not regret the acceptance by the Senator from Pennsylvania, and I thank him very much for his remarks. He went right to the heart of one of the most important debates we will have on the bill, which is how do we structure the intelligence division of this new Department to make sure that we never again look back, as we have now after September 11, and say these barriers to communication between the FBI, the CIA, a whole bunch of people, if those barriers had been broken, and all the information was in one place, we might well have been able to prevent September 11. We have to have it within our power to do that.

I understand some of the concerns of the White House, but I do think the phrasing that Senator SPECTER has talked about is just right. I hope he may play a role in bringing us all together on this. I thank him, also, for the fact that he was my lead cosponsor; I was his lead cosponsor in October of last year when we introduced the original version of the bill creating the Department of Homeland Security which, in fairness, was based in good measure on the recommendation of the Hart-Rudman Commission. I look forward to his active participation in this debate and the days ahead.

Under a previous order, I believe Senator BOXER was to be recognized next, with the time to be taken from Senator BYRD.

**THE PRESIDING OFFICER.** The Senator from California.

**Mrs. BOXER.** I thank Senator LIEBERMAN for all his hard work on this bill, and Senator THOMPSON as well. I thank Senator BYRD because in his 50 years in Congress, he has seen a lot and he has raised some very important issues at which this Senate ought to look. I rise to say thank you to him and to make note that when Senator LIEBERMAN first brought the concept of Homeland Security and a Cabinet-level position for Tom Ridge, this administration was not for that in any way, shape, or form.



It is my understanding not having been on the committee, to my sadness—maybe if I was, I would have had more to say in how this bill would come about—my understanding is that not one Republican voted for the first version of that bill in the committee itself.

So we see a real transition from something that was an idea Senator LIEBERMAN had, the Democrats supported, to one that has been embraced, with some very important differences that will come out on this floor. I want to talk to some of those, as well as some of my own concerns.

I have been in elected life now for 26 years—not as long as Senator BYRD, but long enough to know that reshuffling a structure doesn't necessarily mean you are going to solve your problem. As a matter of fact, it could in many ways make people less accountable, hiding under more layers of bureaucracy. So I approach this debate with an attitude that basically says I am not so sure about this.

I think what Senator BYRD is trying to do here by speaking with some of us who have some of these problems with the bill is to try to see if we can let the Senate work its will and shape this so it does not become an unwieldy bureaucracy that will be not more accountable but less accountable.

We all know what brought us together as a country was what happened on September 11. We will never forget it, and we will commemorate it. But I agree with those who say we have to do this right. It would be a disservice to those who were so adversely impacted if we were to set some artificial deadline for restructuring of the Government, a restructuring which is so huge that a Brookings Institution scholar, Paul Light, said:

I would rank it the No. 1 reorganization in American history in terms of difficulty.

My view is this should be done right. We should keep congressional accountability in the process and not give up the very important powers we have under the Constitution, the checks and balances, not just for this administration but for any administration.

It is interesting to hear President Bush's own words. He says it is the most extensive reorganization of the Federal Government since the 1940s.

The amendment is 350 pages. I say to Senator LIEBERMAN, I believe he has done an incredible job of improving the bill from the House version, and I certainly shudder to think if that House version were to become law because it has a lot of serious problems. So I say straight out to Senator LIEBERMAN, thank you for your work in this regard.

Senator CONRAD made a point today to some of us, stating he had heard from the OMB Director way before September 11 that changing the civil service protections was one of the things this administration has always wanted to do and that all the things that are contained in the House bill, as they would pertain to the employees of this

new organization, are not new things to this administration. They have wanted to break the back, if you will, of whistleblower protection in other cases. They have wanted to break the back of any type of collective bargaining.

As we know, Federal employees cannot strike, nor should they. That is not an issue. But this administration would like to weaken the protections that do belong to Federal employees.

I think Senator LIEBERMAN made a very good point when he said, in a conversation with some of us in leadership, that the protections in his bill that are afforded to the Federal employees who would work in homeland defense are the very same protections that are afforded to the Department of Defense civilian employees.

So it seems to me a rather cruel thing to say you are creating a Department that, next to the Department of Defense—and maybe even in some cases, in some circumstances, even more—for these people who would be put in the line of fire, that we would, as one of the first things, look at weakening the rights they are afforded and make them second-class citizens. This is very disturbing to me.

Think back to September 11, to the heroes of September 11. They were not anyone in this Chamber. They were not anyone in the back room writing this bill. They were working people. They were people, yes, who were afforded the protections of collective bargaining; yes, afforded the protections of union membership. They never looked at their watch and said: Oh, gee, I have been on the 74th floor of the World Trade Center, and now I have worked 8 hours and I am coming down.

I just think it is most unfortunate that the President would not take this opportunity to keep us together here, focused on protecting our magnificent country and the people who reside therein, and instead use it as an opportunity to get through some of the things he was unable to get through in other bills. It is very disturbing to me.

I think Senator LIEBERMAN has shown tremendous leadership in standing strong for those protections. Again, the heroes of September 11 were union members. The heroes of September 11 never let us down. How do you create a new Department such as this and undercut these employees when they need to be at their top performance level, where they need to have the best morale, where they need to believe they are not treated worse, certainly, than any other Federal employee?

There are other things Senator LIEBERMAN did in this bill that I applaud. A weakening of the Freedom Of Information Act that is in the House bill—that would have been a mess for us. Many of our communities want to know what chemicals are polluting their air, ground, and water. Again, some in the House use this as a way to weaken that act and say: We cannot give out that information; the terror-

ists may get it. A mother of little children needs to know if there is arsenic in a plant, if there is a harmful pollutant at a plant. Therefore, I am very pleased that, with Senator LEAHY's help, where he was able to fix this, that is not a problem.

For the remainder of my remarks, I focus on the Federal Emergency Management Administration and a couple of other agencies that were just lifted and taken lock, stock, and barrel into this new, enormous creation called the Department of Homeland Security. In California, we suffer from every kind of natural disaster you can imagine, from earthquakes to fire, to flood, to drought, to pestilence. We see it all. Unfortunately, we see it often.

People sometimes say to me: Senator, why do people want to stay in California? Every other month, you are having another crisis.

I guess you have to just be there to understand. You are living in an area that is God's gift to the world. With that beauty come all these problems.

The bottom line of it is, we, unfortunately, have a terrible share of these disasters. Putting the Federal Emergency Management Administration, lock, stock and barrel, into this new Department I just think is going to be a real problem for us. Why not just take those folks in the Department who would work on homeland security but leave the others in place?

It took many years to straighten out the problems of FEMA. I have gone through the worst of it. Under President Clinton and under James Lee Witt, we saw a tremendous uplifting of FEMA's morale. They know what they are doing now. All of us, Democrats and Republicans, have benefited from that. Our people have benefited from that. Now we are moving this, lock, stock and barrel, and I am very worried about accountability.

Others have spoken of the Coast Guard. I feel the same way about that. Search and rescue—last year, the Coast Guard saved 530 lives in California. I know how important they are to homeland security, but the same thing should apply here. You do not have to lift the whole thing up, lock, stock, and barrel.

We also have the INS situation, where the immigration and naturalization services are very far behind.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. I ask for 2 additional minutes.

Mr. BYRD. I yield 2 additional minutes to the distinguished Senator from California.

Mrs. BOXER. I thank Senator BYRD. Now that he is here, I can tell him how much I appreciate his raising the red flags.

The INS, backlogged with processing immigration—good people, kind people, family people. It seems to me, again, we should have done this in a little bit of a different way.

If we really want to do something for homeland security, I would rather see

us spend the \$5 billion that we passed in this Senate that spoke to the need of homeland security and aviation security. We need more machines to check bags for bombs. We know the things we need to do at our ports. We lack the infrastructure. Instead of spending time moving pegs on a board and lifting agencies from one desk to another, I would rather go back and send the President that \$5 billion and say to him that we don't understand why he refused to spend this money. If he is so concerned about homeland security, why did he say he wasn't going to spend this? He said it was bad for the economy because of the deficit.

I was an economics major. One thing we know is that if the Government spends and invests in the needs of the people, such as homeland security, it is going to create thousands of jobs, and it would do something that is important. It doesn't help the economy to sit on that money. Frankly, it does not help the economy or homeland security if you create a big bureaucracy and they have no place to even put these people. And, by the way, if they are just going to be changed in name only, it is very confusing to me why we are doing this.

From all of my years in public life, I think we could have done this in a very lean and mean way. We could have made this a Cabinet-level position, which most of us supported. If the President wanted it to happen, he could have said we are going to have people dispatched who report to Tom Ridge and to each of these agencies and start to bring back and forth to him what we need to do in those agencies.

I thank you very much, Mr. President. I have a lot of serious questions about this.

I thank my colleagues for their consideration.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, we have had a good discussion on this motion to proceed.

I thank Senator BYRD for doing what he has done. I will say publicly what I told him privately before the recess: I thought he was doing all of us a favor by slowing us down a little bit. There was an awful lot of talk about we must get this done by September 11 for symbolic reasons, and symbolism is important. But it is not nearly as important as it is to get this right. We will not get it right forever. We will be dealing with it probably for some time to come. But it is important to get it as right as we can. I think it is very important that we take the time necessary to do that. We can disagree as to how long is enough time. But I do think we can all agree that in retrospect, we were kind of headed toward a stampede there for a little while where we wanted to get something passed so we could say we got something passed. That receives short-term benefits maybe to us but it doesn't do much in

terms of long-term benefits to the country. I think we are where we need to be now. We have come back. We have had a chance to digest this, discuss it, debate it in a public forum, and now to discuss it here on the floor.

Senator BYRD made some very interesting and valid points about things that we need to consider. He, I think rightfully, pointed out that the NSA creation was probably the model that not only the President is going by, but the model that we all can have in terms of importance and in terms of how long it takes to put these things together. It took a good while to put the National Security Agency together. I believe it took 6 months between the time the bill was introduced and the time that it was passed. I point out that it was after a war. I do think probably Congress had a little more leisure during those days than we have. It was 2 years after the war. Of course, we are just beginning our endeavor. We don't have quite the leisure that perhaps the Congress did at that time.

We have been considering the overall concept one way or another, formally or informally, for some time. The Gilmore Commission came in December of 2000 with a recommendation for a Homeland Security Department. The Hart-Rudman Commission came out in February, I believe, of last year, with a recommendation. We didn't pay enough attention to it soon enough. But it was out there. It was discussed and considered at that time. Congress, from time to time, has certainly considered many of the component problems that have led to this bill.

For example, the problems with the INS are certainly no secret. We have been dealing with that. We have been dealing with other problems the Government has.

I suggest the time is ripe, and there is no reason now for us not to address this issue after we have had a full-fledged discussion. I think the analogy to the Transportation Security Administration that was referred to and that was referred to in the newspaper today is a good one. I think it shows the difficulty that we have when we establish an agency that is having to recreate itself on the one hand and do the job on the other simultaneously. That is a very good point. What we are doing here in terms of the Department of Homeland Security is TSA enlarged in many respects.

That leads me to perhaps a slightly different conclusion. That leads me to the conclusion that what we need to do to avoid that problem is to give the people who are in charge and have the responsibility for making sure this works the tools they can use to make it work. We had a civil service organization system, and we had a management system, the paradigm for which was established many years ago. We live in a different world now. That is what the President is talking about when he is talking about managerial flexibility and having the tools with which to manage this thing.

If you talk to corporate leaders who have undergone transitions that are much less complicated than what we are doing, they talk about how difficult it is and how important it is to have the right kind of culture but also to have the managerial talent, the managerial wherewithal and flexibility to address those thousands of problems and difficulties that you are going to have in trying to pull all these factors together. These corporate managers don't even have Congress to answer to or deal with or worry about. Certainly, when it comes to Government, Congress cannot deal with each of these issues.

We have to either trust our leadership to the point of giving them some managerial flexibility or not. I think that is what we are doing here. That is what this is all about. It is not a major grant of new power; it is a granting of power by Congress after thorough deliberation to better manage what Congress is establishing within the discretion of Congress, and having the annual appropriations process, among other hearings and considerations, in which to evaluate what is going on. I think we have to give that kind of authority if we are going to place on these people the kinds of responsibilities that we are placing on them.

There has been a concern expressed about personal liberties. Democracy always has to—especially a democracy under attack—balance the national security of the country with the personal liberties that we hold so dear. I think we have done a pretty good job of that. Some of the things that the administration has done have been somewhat controversial. They are not really reflected in this bill. This bill really doesn't deal with any of those things. But I do think it is appropriate to point out that in other times President Lincoln instituted habeas corpus. President Roosevelt had internments, and things of that nature. Other Presidents have taken rather severe action when they deemed it necessary in times of war and in times of national security. We are not even approaching things of that nature. And we are not really even approaching the subject matter in this bill.

So I respectfully suggest that there is no danger here of giving the President too much power. The danger, quite frankly, is that we are establishing a new Department that is complex, multifaceted, and is going to be difficult to organize without giving the President some authority that several other Government agencies already have, that the Congress has already given them.

We will have an opportunity to discuss this later when appropriate amendments come up. But in the area of national security, and in the area of flexibility with regard to some of these agencies, what the President is basically asking for is the same authority that prior Presidents have had in the national security area, and the same

authority for this new Department that other Department heads already have. So I do not think we need to concern ourselves overly about that. But I will say that it is refreshing to stand on this floor, to sit and listen to someone such as Senator BYRD talk about first principles, talk about the basic function of government, talk about the things the forefathers concerned themselves with, and the things we should concern ourselves with as we go forward with this bill. But I suggest that it is time we go forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Twenty-four minutes.

Mr. BYRD. I thank the Chair.

Mr. President, I begin my closing remarks where I should begin, by thanking Senator LIEBERMAN and Senator THOMPSON for the leadership they have demonstrated in holding hearings, in holding the markups, in exploring the questions that were asked, in attempting to find solutions to questions and concerns and problems that occurred to them through others and sometimes not through others. I thank these two Senators who represent, I believe, the finest.

I have been a Member of the body now 44 years next January 3, the Lord willing. The fine old woman who raised me taught me to say that: I will do thus and so or so and so, the Lord willing. Of course, that comes from the Book of James, the 4th chapter, and the 14th and 15th verses: Don't say that you will go to a city tomorrow and that you will purchase thus and so and that you will do thus and so, but say, the Lord willing, you will go and do thus and so.

And I thank these Senators. I am glad that the Good Lord has permitted me to live in this age when we can have Senators who acquire the high qualities of the two Senators who are about to manage the legislation that will create a Homeland Security Department.

I favor the creation of a Homeland Security Department. And I think that the Senate within the next few minutes should vote unanimously to proceed to take up this legislation. That is the way it should be done. Let's take it up, and then let the Senate work its will.

I thank the two leaders for their cooperation in helping to bring this about and in providing a time and an opportunity when we can mull over and talk about and decide these great questions that confront us.

I would have resisted going to the bill had the motion been made prior to the August recess. I would have resisted with all of my heart and all of my strength. But I do not resist going to the bill now. With the Senate in recess, we have had a month in which to read the House bill, which largely reflects the administration's position, to read also the legislation that has been

reported from Senator LIEBERMAN's and Senator THOMPSON's committee. And I have taken occasion to do just that.

Now, when we proceed to take up the House bill, it will be done, and then, at some point, presumably early on, Senator LIEBERMAN will offer his substitute. He will offer the committee of the committee which he chairs. And the Senate will then have both bills before it. The underlying measure will be the House bill. And then there will be the substitute, which will be a clean bill reported by Senator LIEBERMAN's committee. So the Senate will have before it both bills. Senators may proceed to amend the underlying bill. They may proceed to amend Senator LIEBERMAN's bill, the substitute. We will have both bills before us.

I call to the attention of Senators that once we pass this bill, whatever the bill is that the Senate passes—I am not saying I am going to vote for it; I may—but whenever the Senate passes legislation dealing with the creation of a Department of Homeland Security, then that is the last time the Senate will visit the matter until the legislation comes back from the committee of conference. And that legislation will be in the form of a conference report, which cannot be amended. Senators will have to take that measure, then, up or down.

So this is it. This is our chance, and our only chance, to fully discuss and amend the legislation. And I hope Senators will approach the matter in that vein, realizing that the product that emanates from this Senate, after whatever time we take to debate and vote on it, will be the final product the Senate itself will have had an opportunity to mold and to amend. That is it.

We are going to have to live with that. I have been greatly concerned about the legislation, as I have read it, that the House has passed, and with particular reference to title VIII of that bill, which I will not go into now.

But I have been greatly concerned. I am concerned that the Constitution and its principles and the rights and privileges that flow from that great document—which has no equal in the world as far as governmental, organic documents are concerned, no equal—

I am concerned that those rights and prerogatives that flow from that document will have been impinged upon. I am greatly concerned about the constitutionality, in whole or in part, of some of the things that we are about to do—if we do them—that are particularly contained in the House bill.

Now, we may pass legislation that is unconstitutional, and if it is never tried out in courts, it may be out there and there may not come an occasion where there is a case or controversy which goes to court. But I say that we have a responsibility.

I used to hear Sam Ervin, that eminent jurist and great late Senator from North Carolina, say that we in the Senate have a duty to determine in our

own minds the constitutionality of measures that we pass.

That is why I joined with Senators on both sides of the aisle in bringing the line-item veto and pushing that matter to a decision by the U.S. Supreme Court. Of course, we didn't have standing, as the Court determined, but we did proceed; but those who did have standing were pursuing it. Thank God, somebody pursued it, and I say thank God to the Supreme Court of the United States for throwing out that bad legislation. I said it was bad and the Court agreed.

Here we are today with legislation that can certainly be dangerous in many ways. I have talked about some of those things, and I will have a further opportunity. But before I proceed with my final prepared remarks, let me thank Senator THOMPSON and Senator LIEBERMAN. I thank Senator THOMPSON for his closing remarks today, and I also thank Senator LIEBERMAN. These are gentlemen and I respect them as gentlemen. They have high and noble principles. That cannot be said of all men, of course.

We are here today because nearly 11 months ago, 19 men commandeered 4 aircraft. Their goal we know all too well. They crashed one aircraft into the Pentagon. One hurtled into the north tower of the World Trade Center. Another tore into the south tower a few minutes later. The men and women aboard the final plane, after learning of the fate of the others, decided to resist the hijackers. They knew that, in all likelihood, they were about to die. But they entered into the embrace of death willingly after having decided to do what they could do to prevent the untimely and abrupt death of other men and women.

I have no doubt, as we were taken out of this Capitol that day, ushered out by the policemen here, that that last plane was coming to hit this Capitol or the White House—one or the other. I just know in my own mind that it was headed here. But those men and women on that plane died for us. Their plane crashed in rural Pennsylvania. If not for the heroic efforts of those men and women, we would have scores of additional names to remember as victims of the worse terrorist attack in the history of our country.

We are here today debating because of those 19 hijackers. We are here because of the rescue workers who moved so quickly, so selflessly, so valiantly to save lives, only to lose their own while carrying out their duty. We are here because of those thousands of men and women who, on September 11, 1 year ago, were sitting at the desks, walking through the halls, doing their jobs, only to have such brutality bring to an end their precious lives, and so abruptly. They never had time to say goodbye to their loved ones. We are here, Senators, because we can never forget that day and because we never want this Nation to have to go through and experience the horrors of that day again.

In many ways, the creation of a new Department of Homeland Security will serve as a legacy to those more than 3,000 men and women who had lost their lives on that clear fall day 1 year ago. We must not rush to create a department in the memory of those who lost their lives on September 11. If that Homeland Security Department does not better prevent another attack, what becomes of the sacrifice of those lives almost 1 year ago? If in the rush to create a new department we make Americans more vulnerable to attack while the transition is going forward rather than less, what kind of a legacy does that leave? What tribute does this Congress and this President pay to the victims of September 11 if we only tangle the lines of homeland security rather than straighten them and strengthen them?

I believe that much is to be said in gratitude to Senator LIEBERMAN and Senator THOMPSON and their committee for their efforts to straighten the lines. I honor and respect and pay tribute to these Senators and to the product which they have given this Senate and which we will soon be discussing. But having been in various and sundry legislative branches at the State and local levels and at the Federal level, I know there is no committee, including the one I chair, that can be perfect.

As an experienced legislator, I look at this product in that fashion. It is a good product. It is a much better product than that which the House has sent us after 2 days of floor debate. But I think the full Senate can do better.

I believe that if we act in haste to pass this legislation, then we pay no tribute, we honor, no memory.

The legislation creates a new Department of Homeland Security. It is originally based on the plan of four men—not exactly the committee of five which wrote the Declaration of Independence. It is quite a different group. I don't say that disparagingly of the four fine men who came up with this idea in the bowels of the White House. But the legislation to create a new Department is based on the plan that originally was hatched in the subterranean caverns of the White House—four men, fine men, sitting in the depths of the White House, trying to counter mounting political pressures. These four men have done nothing more, really, than shuffle boxes on a piece of paper.

The administration calls this the largest reorganization of Government since World War II. I say it is the largest reorganization of Government since our constitutional Framers sat at the Convention in 1787. They reorganized the Government under the Articles of Confederation. Under that Government, under the Articles of Confederation, the Congress was the legislative, the executive, and the judicial. So those men reorganized the Government and gave to the various States, to vote on in their ratifying conventions, this

product that was signed by those men in Philadelphia on September 17, 1787.

That was the first reorganization. That was the greatest reorganization because no longer do we operate under the Articles of Confederation but we operate under the Constitution of the United States. So now we have come to another reorganization proposal, the one we have been discussing.

Terrorists have the advantage of knowing when they will strike, where they will strike, and how they will strike. Law-abiding men and women do not know when the terrorists will attack, where they will attack, or how they will attack. If the truth be told, there is no department that this Congress can conceive that alone can save Americans from terrorist attacks. Moving a few squares on a flowchart will not, on its own, save lives.

I remain suspicious about a complex, extensive reorganization plan originally authored only by a group of four men in absolute secret, a plan which we are told was not revealed until the day the President revealed it, at which time several of the Department heads, whose Departments would be affected by the plan, had not been contacted and not been consulted. That is what I understand from reading the press. So I remain suspicious about a complex, extensive reorganization plan authored only by a group of four men in absolute secret. I believe such a plan is likely—likely—to be politically motivated somewhere along the line. There is an old fiddle tune I used to play, "Somewhere Along the Line."

I hope that is not true. I hope the motivations were pure, but should we not all be a little suspicious of this process? Congress should be especially careful, given the way this plan was formulated. We ought to consider our actions thoroughly and realize that the steps we take in the next few weeks will have ramifications for decades to come.

In the past few weeks, as the House select committee has held its hearings and the Senate Governmental Affairs Committee has drafted its plan, the focus has not been on how to best save lives. Rather, the focus, in part at least, has been on the "bureaucratic turf wars" that have developed. Should Secret Service be in, or should Secret Service be out?

The PRESIDING OFFICER (Mr. DAYTON). The time under the Senator's control has expired.

Mr. BYRD. Mr. President, I have need for a few more minutes. May I call upon the mercy of the distinguished Senator who chairs this committee, if he has time, if he would let this poor Senator from the hills of West Virginia have a few more minutes?

Mr. LIEBERMAN. The Senator is moving me. I say to Senator BYRD, obviously I do not want to cut him off. I guess in return I ask for a certain amount of mercy because I hope to leave in an hour to attend an event at my daughter's school. The Senator

may proceed as he will. I do not intend to use the rest of my time, and I hope Senator BYRD will finish with as much dispatch as he can and still make his points.

Mr. REID. Will my friend from West Virginia yield for a question?

Mr. BYRD. Yes.

Mr. REID. I am wondering, with the three managers of the bill here on this phase of the debate, if we can agree on what time we are going to vote today. The time runs out at 6:37 p.m. It is my understanding that Senators THOMPSON and LIEBERMAN will be willing to give back some of their time.

Mr. LIEBERMAN. Yes, Senator THOMPSON has concluded his remarks. When Senator BYRD has finished, I will have concluding remarks that will go no longer than 5 minutes.

Mr. REID. Is Senator BYRD going to speak for 10 minutes?

Mr. BYRD. Well, let me put it this way. As far as I am concerned, we can vote now. As far as I am concerned, we can vote by voice. I intend to vote to proceed to take up this measure, but Senators have been told we would vote. I will stop editorializing on my own remarks and read what I have prepared and sit down.

Mr. LIEBERMAN. Fine. I thank the Senator.

Mr. REID. So the answer is we do not have a time certain.

Mr. LIEBERMAN. But no later than 6:36 p.m.

Mr. BYRD. Mr. President, I thank the distinguished chairman, Senator LIEBERMAN, for his generosity.

What about the Secret Service, should it be in or out? What about the Coast Guard? Why is the Bureau of Alcohol, Tobacco, and Firearms left out? While the 170,000 men and women targeted to move into this new Department try to figure out where the desks and telephones will be, the Nation's homeland defense system may be far less effective, not more.

We in the Congress must insist on more information about the fine details, such as what this plan means for the separation of powers, why one agency was selected while others were left out. We must take time to determine if this approach is the best approach or if it is little more than cherry-picking the best agencies while leaving others behind.

There will be those who charge that by moving to slow this legislation, I and others are endangering the lives of Americans and that we are thinking about our pet projects in our own States. What a sorry, empty claim to make. This Congress, at the urging of the Senate Appropriations Committee which I chair, has added \$15 billion for homeland security over the course of the past 8 months. That funding has helped us to take immediate steps to make Americans safer from attack and to better prepare our response efforts should another attack occur.

That funding paid for more than 2,200 agents and inspectors to guard our

long, porous borders with Canada and Mexico. The foreign student visa program, which has been identified as one of the Immigration and Naturalization Service's chief loopholes, is undergoing a tighter tracking system because of funding that Congress included in its first homeland security funding package within 3 days after the tragedy occurred in New York City.

Across this country, local police officers, firefighters, and emergency medical teams are receiving new training and equipment to handle threats that before last fall they hardly considered possible. Federal law enforcement also benefited from the work of this Congress. Because of the funding initiated by the Appropriations Committee, the FBI started to hire hundreds of new agents. More than 300 additional protective personnel were hired to protect the Nation's nuclear weapons complex. Air marshals have been hired to protect our planes. Seven hundred and fifty food inspectors were hired to ensure the safety of the meals served at America's kitchen tables. We have paid for smallpox vaccines and health department training. We are tightening security at our seaports and purchasing new bomb-detecting equipment at our airports. We are taking steps to protect American lives now, today, and not just waiting for a bureaucratic shuffle to protect us.

Congress, the elected representatives of the people, have done this. Congress also acted to provide additional emergency funding to strengthen terrorism prevention and to give much-needed aid to first responders at the local level. But President Bush has refused to spend some of these critical funds because he and OMB Director Mitch Daniels want to make a point about budget discipline.

If the President is really serious about preventing terror, as he says he is, he should not play politics with this important funding, which by the signature of his name could have been released to the people at the local levels, throughout the land, for the protection of the people and the protection of the infrastructure of our country.

Members of Congress and the President would like to be able to tell the public that they honored the victims of September 11 by creating a new Department for Homeland Security on the anniversary of the tragedy. That is understandable for politicians. But as Senator THOMPSON pointed out, we want the right product. We want to take the time and do the job right.

In a few days, Americans will pause to remember the moment when the airplanes struck the World Trade Center, the Pentagon, and the Pennsylvania field. We will remember the mothers and fathers, the brothers and sisters, the firefighters, the police officers, the ambulance drivers. We will remember all of those who lost their lives in those tragic moments. But as we craft this legacy to their lives, we owe them more than a press release. We owe

them our best judgment. We owe them rational, responsible action. We owe them a legacy that may truly save other lives, the lives of the people and the families of those who died, the progeny of those fathers whose lives were wiped out in the batting of an eye.

Based on what we know about the legislative proposals before us, there can be no assurance that such a legacy will ever result. I am concerned that the monument that will result from this effort may be one of weakened protections for America's civil servants, one that may allow the security that is our goal to buckle under the weight of an administration's untold agenda. What will this legislation do to the people's rights, to the first amendment, to the second amendment, the third or fourth? Do we know what this bill does to the fundamental protections embodied in the Constitution?

I am concerned about what we do not know about what has been kept from us by an administration adept at dealing in the shadows. I am concerned that this bill goes too far to protect the privacy of the White House and not far enough to protect the privacy of law-abiding citizens outside the White House.

We are being pressed to pass this legislation to protect American lives, but we must not allow ourselves to be blinded to the new threats it may present to our laws and our constitutional system if we pass the legislation for which the administration has asked.

Each of us has an obligation not just to put a new banner over a collection of agencies but to ensure that those agencies work together to protect the American people. Reorganizations of any size have a tendency to drift, to veer off course. A reorganization of the magnitude envisioned is likely to career out of our control if we do not take the necessary steps to keep it on track. We cannot throw up our arms in celebration at the moment a bill is signed into law and walk away wrapped in the folds of glory. If that is all we do, we will surely drop the reins.

This Senate must do everything within its power now to ensure that the promise embodied in this proposed reorganization is kept. We must focus beyond the mere creation of a new Department and grapple with the details of its implementation. We should insist on a clear understanding of the mission of the new Department. We should know the criteria that are used to determine which agencies will be part of it. We should insist that the constitutional rights of the people are protected. We should insist on assurances that this administration will not use this reorganization as a cover to dismantle worker protections. We should insist that the important non-homeland-security work of the transferred agencies is not sacrificed as those agencies assume new missions.

Senators know of my great respect and fondness for history of the ancient

Romans. Montesquieu first pointed the way, and having read a great deal of Montesquieu's work, I came to the conclusion that Montesquieu must have been right because he loved the history of the ancient Romans. As a matter of fact, he wrote a history of the ancient Romans. So I decided I would do some of that reading, too.

I close with a quotation. Gaius Petronius Arbiter, a Roman poet and advisor to Nero, is reported to have said:

We trained hard . . . but it seemed that every time we were beginning to form into teams we would be reorganized. I was to learn later in life that we tend to meet any new situation by reorganizing; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralization.

What a quotation from a Roman 2,000 years ago, and more. Before we rush ahead with so many questions unanswered, let us ensure that the product of our work is not just an illusion but substance. If it is a monument we are building, let it be one that will endure.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I simply thank the very able Senator from West Virginia for once again calling on the Senate to face these very fundamental questions that are involved and which he has been speaking to in the course of the day. I think it behooves all of our colleagues not only to have listened to the able Senator but to go back and read his remarks and to consider them carefully and thoughtfully as we address this major legislation.

Now we are embarked, of course, on creating a new Department, but we need to be very careful in how we do it. We need to be very thorough in how we do it. We need to be very thoughtful in how we do it.

I commend the chairman of the committee, the able Senator from Connecticut, because I think he has brought all of those qualities to this legislation that he has now brought forth in the Senate.

There are very important questions involved here in terms of how the political system works and how the checks and balances work and what the allocation of powers is. Some say this is a fight over turf or over prerogatives. It is no such thing. This is trying to resolve the most basic questions about how our system of self-government is to work and what the balance is to be between the legislative and the executive branches; indeed, the judicial branch is drawn into this, as well.

I hope as we address this legislation in the days to come, my colleagues keep in mind the analysis and the history which the Senator from West Virginia has brought to the floor today. I express my deep appreciation once again. He reminds us of the fundamental questions we confront and of the importance of rising to this occasion.

Mr. BYRD. I thank the Senator for the generous remarks.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I agree with my friend from Maryland: The Senator from West Virginia has made a contribution here with his thoughtful leadership over the years, of course, and his thoughtful statements today. Even when I do not meet the statements with personal agreement, I know he forces me to think about fixed premises that I may bring to the debate, as well as everyone in this case, and that will make the product of our deliberations better than it would otherwise be.

I was thinking about the quote at the end of Senator BYRD's remarks. It is true that reorganization or reform can sometimes not be in the interest of progress and can be a cover for disorganization and an excuse for inaction more broadly.

I do want to argue that this proposal that has come out of the Senate Governmental Affairs Committee, which builds on work that had been done by the Hart-Rudman Commission, which meshed with recommendations from the White House, is a necessary reorganization.

The current state of reality in our Federal Government is that we are disorganized. It is in some ways dysfunctional as it comes to protecting the security of the American people from a threat we have imagined, we have seen some small evidence of over the years. But on September 11 we were shocked from our lethargy and our apathy and our tolerance of disorganization, seeing the painful personal consequences of that disorganization—almost 3,000 Americans dead only because they were Americans, struck in a vicious and savage and cunning way only because they were Americans. They did not have the courage to take us on in a conventional field of battle but struck an undefended target full of innocent Americans.

That disorganization can no longer be tolerated. I have a sense of urgency about this. I look at the evidence we have accumulated about the various ways in which our intelligence and law enforcement personnel could have cooperated, could have shared information prior to September 11. I wonder, could we have prevented this from happening? I look at the way in which we have tolerated disorganization and overlap at our borders with failures of the various Federal agencies there and inability even to communicate with one another. I look at our ports, with 95 percent of the goods coming into the United States of America. Most people are shocked by this number: 95 percent come in by ship, yet the Customs Service is able to truly inspect only 1 percent of the containers coming in.

I could go on and on about airport security pre-September 11 and security of our financial systems, cybersystems, and all the rest. We are just not orga-

nized to prevent what happened on September 11 from ever happening again.

In this regard, I have the echo in my mind of a meeting I attended some months ago with families of victims of September 11, mostly families of victims because most of them were from Connecticut, some from New York, who died in the World Trade Center. The plaintive question they asked me was, how could this have happened? I do not want to ever be in a position to face another group of fellow Americans who ask me again, how could this have happened?

I make no claims that adoption of the bill that our committee has reported on will be a guarantee against terrorism. I suppose if someone has so little regard for their own life and other lives that they are prepared to strap bombs around themselves and walk into a crowd, that is not easy to stop. But something as well planned, as comprehensive, with as many contacts with private sector bodies, including flight training schools and public agencies, we should be able to prevent. The only way to begin to do it is to create a structure that is accountable, that has a uniform chain of command, and that will put people in place to overcome the gaps the terrorists took advantage of on September 11.

That is why I have urgently brought this matter to the floor, with the wonderful bipartisan group of members of the Governmental Affairs Committee who contributed substantially to the product on the floor, and the various Members of the Senate on both sides with whom we have worked on parts of this proposal. There were 18 hearings, 3 or 4 days of committee meetings and markup. A lot of work has been done on this, building on work that had been done years before by others, as to how we can best protect the American people from terrorism.

It is time to proceed. We have had a very good opening day of debate. Obviously, there are some differences of opinion regarding the pace of action in Congress or whether the executive branch is seeking or being given too much authority, whether one or another agency that is consolidated by this bill should be consolidated, how strong our intelligence division should be in this Department, how much should we bring matters together. Should we give this President and his successors unprecedented authority over civil service and Federal employees?

All of these matters, I know, will be directly discussed in the days ahead. And many of them, if not all of them, will be subjects of amendment before this Chamber. This is a big bill. It is a big proposal which responds to an urgent problem. As others have said, it would be the largest reorganization of the Federal Government in 50 years, since the post-World War II reorganization of our national security apparatus. That is what the reality of our times requires. It is why we need the

debate we will have in the days, and perhaps weeks, ahead.

In the paper today, there is a story that our intelligence service is working with foreign intelligence services and has tracked the movement of gold, substantial amounts of gold, apparently owned by al-Qaida, from Pakistan through Iran, the United Arab Emirates, into Sudan, where it may be in Khartoum now. What does this tell us? That the enemy is out there, that we won a victory, a great victory, in Afghanistan, but that was only the first battle of the war.

Again, the enemy is not out there on a field of battle where we can see them, or in ships at sea. They are in the shadows. They have not diminished their intention to strike at America, and Americans only, because we are America and Americans. Now we, as the representatives of the American people here in Congress, we draw ourselves together, to have our debate, have our discussion, but in the end, to do what we must do to create a Department of Homeland Security that will be a strong line of defense against al-Qaida and anyone else out there intending to strike at the American people here at home.

One thing I do know, in the midst of all the debate, is we are ready to proceed. We have had a good opening day. Many more days of debate will come. But on the specific motion before us now, the motion to proceed, I am sure we are ready to vote.

I yield whatever remaining time I have and I ask for the yeas and nays on the motion to proceed.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The question is on agreeing to the motion to proceed. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), and the Senator from Delaware (Mr. BIDEN), are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Texas (Mr. GRAMM), the Senator from Arkansas (Mr. MURKOWSKI), and the Senator from Pennsylvania (Mr. SANTORUM), are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 209 Leg.]

YEAS—94

|           |          |            |
|-----------|----------|------------|
| Allard    | Cantwell | DeWine     |
| Allen     | Carnahan | Dodd       |
| Baucus    | Carper   | Domenici   |
| Bayh      | Chafee   | Dorgan     |
| Bennett   | Cleland  | Durbin     |
| Bingaman  | Clinton  | Edwards    |
| Bond      | Cochran  | Ensign     |
| Boxer     | Collins  | Enzi       |
| Breaux    | Conrad   | Feingold   |
| Brownback | Corzine  | Feinstein  |
| Bunning   | Craig    | Fitzgerald |
| Burns     | Crapo    | Frist      |
| Byrd      | Daschle  | Graham     |
| Campbell  | Dayton   | Grassley   |



|            |             |            |
|------------|-------------|------------|
| Gregg      | Lieberman   | Sessions   |
| Hagel      | Lincoln     | Shelby     |
| Harkin     | Lott        | Smith (NH) |
| Hatch      | Lugar       | Smith (OR) |
| Hollings   | McCain      | Snowe      |
| Hutchinson | McConnell   | Specter    |
| Hutchison  | Mikulski    | Stabenow   |
| Inhofe     | Miller      | Stevens    |
| Inouye     | Murray      | Thomas     |
| Jeffords   | Nelson (FL) | Thompson   |
| Johnson    | Nelson (NE) | Thurmond   |
| Kennedy    | Nickles     | Torricelli |
| Kerry      | Reed        | Voinovich  |
| Kohl       | Reid        | Warner     |
| Kyl        | Roberts     | Wellstone  |
| Landrieu   | Rockefeller | Wyden      |
| Leahy      | Sarbanes    |            |
| Levin      | Schumer     |            |

## NOT VOTING—6

|       |       |           |
|-------|-------|-----------|
| Akaka | Gramm | Murkowski |
| Biden | Helms | Santorum  |

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

## HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

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

The PRESIDING OFFICER (Mrs. CANTWELL). The Senator from Nevada.

## MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

## THE NOMINATION OF JUSTICE PRISCILLA OWEN OF TEXAS TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

Mr. HATCH. Madam President, I would like to make some brief remarks about the nomination of Justice Priscilla Owen of Texas who has been scheduled for a vote in the Judiciary Committee as early as this Thursday. I cannot say strongly enough how important this vote is for the future of the Judiciary and this Senate.

With the attempt by some to introduce ideology and base politics into the confirmations process, today a sword of Damocles hangs over the future of nominations and our constitutional role and no vote will hint the future more than this upcoming vote on Justice Owen.

Justice Owen has been attacked with orchestrated deceptions, distortions and demagoguery, yet she has the American Bar Association's unanimous rating of well qualified."

In preparing for Justice Owen's vote, I again commend to my colleagues the words of Senator BIDEN when he said some years ago that:

[Judicial confirmation] is not about pro-life or pro-choice, conservative or liberal, it is not about Democrat or Republican. It is about intellectual and professional competence to serve as a member of the third co-equal branch of the Government.

Allow me to make just some brief remarks on the allegations made against Justice Owen which she clarified both in the hearing and in answers to written questions since then.

First, and most outrageously, it was said that she delayed in issuing an opinion in a car accident case involving a boy who subsequently died and that he died while waiting for her decision. And that she raised an issue, court venue, not previously raised by the lawyers.

The truth is that Justice Owen wrote an opinion for the majority in that case just 5 days after the majority reached a decision. The boy died 3 years later. And venue is automatically at issue when the petition is for a new trial and it was both briefed and argued by the lawyers, as was the case. That's the truth.

There is no use in holding hearings and asking written questions if we ignore the answers.

Second, she has been accused of being a "judicial activist" who pursues an outcome-based result.

The truth is that she is a judicious judge who never digresses from the rules of precedent and legal construction. She always grounds her decision in binding authority or judicial rules of decision. The charge that she is a judicial activist is a cynical trick of words from Washington lobbyists who have made their careers defending court decisions of real judicial activists who never let the words of the Constitution stand between them and their social engineering.

Another falsehood is that she is anti-abortion and is out to defeat abortion rights.

The truth is that Owen has never stated her personal views and has ruled in one case for Planned Parenthood and against Operation Rescue pro-life protestors. In the parental involvement cases, Owen repeatedly applied *Roe v. Wade* and the Supreme Court cases and used them to interpret the legislature's choice of words in the statute.

It is said that in her parental notice cases, Owen sought to limit abortion rights.

The truth is that no abortion right is affected by giving mere notice to parents. And over 600 bypasses of notice have been granted by the courts under the standards Owen and her court established. The Texas Supreme Court merely debated the guidelines for lower courts to apply on a brand new law. The Court sought to effect the legislature's intent: to protect parental involvement rights, the right of parents to guide their children and protect them from harm was at stake, not abortion.

Justice Owen has been called an ideologue who is out of the mainstream.

The truth is that Owen was twice elected in Texas, the last time with 83 percent of the vote. She is a quiet, modest person, who leads her Church choir, and had to be convinced to leave a lucrative law practice to become a judge. She was unanimously rated well-qualified, the highest rating of the ABA, despite the ABA's pro-abortion stance.

It was noted that Justice Owen dissents too often and rules in favor of corporations and big money.

The truth is that she has dissented fewer than 10 percent of the time, that's half the average for any current U.S. Supreme Court justice. She is an umpire who calls the balls and the strikes as they are. It is silly to suggest that she is pro-bat or pro-ball, pro-batter or pro-pitcher.

Let's speak truth to power.

The main reason Justice Owen is being opposed, is not that personal views are being falsely ascribed to her, they are, but rather because she is a woman in public life who is believed to have personal views that some maintain are unacceptable for a woman in public life to have.

Such penalization is a matter of the greatest concern to me because it represents a new glass ceiling for women jurists just as they approach the tables of our high courts after long-struggling careers. Such treatment will have a chilling effect on women jurists that will keep them from weighing in on exactly the sorts of cases that most invite their participation and their perspectives as women.

On abortion, the truth is that, rather than being an activist foe of *Roe*, Justice Owen repeatedly cites and follows *Roe* and its progeny as authority.

Moreover, her opponents portray her as a pro-life activist, when all she has ever done is rule on a parental involvement law, popular with over 80 percent of the American people. The bottom line is that they are blinded to anyone who will not abide by abortion on demand even for little girls, without parents ever knowing.

I hope my colleagues will treat Justice Owen fairly when the vote comes. As they say back home in Utah, I hope they will choose the right.

But I warn them, the American people will hear of the result, and I warn them also, a sword of Damocles will hang over the Senate and the future of the Judiciary Committee when that vote comes.

## THE HONORABLE JESSE BROWN

Mr. CONRAD. Mr. President, I was deeply saddened to learn of the untimely death of Jesse Brown on August 15, 2002. I was aware of Jesse's struggle with Lou Gehrig's disease, and know that friends, veterans and government officials across the Nation had Jesse and his family in their thoughts and prayers.

Jesse was an individual for whom I had the highest regard. He was truly a