

billion cost of the Gulf War, which equaled about 1% of GDP in 1991. During that war, U.S. allies paid \$48 billion of the cost, says William Hoagland, chief Republican staffer of the Senate Budget Committee.

This time it is far from clear how much of the cost—if any—America's allies would be willing to bear. Most European allies, apart from Britain, have been trying to dissuade Mr. Bush from launching an attack, at least without a United Nations resolution of approval. But if the U.S. decides to invade, it may be able to get the allies to pick up some of the tab if only to help their companies cash in on the bounty from a post-Saddam Iraq.

Toppling Mr. Hussein could be more expensive than the Persian Gulf War if the U.S. has to keep a large number of troops in the country to stabilize it once Mr. Hussein is removed from power. Despite the Bush administration's aversion to nation building, Gen. Tommy Franks, commander of U.S. troops in the Middle East and Central Asia, recently said that the U.S. troops in Afghanistan likely would remain for years to come. The same is almost certain to be true in Iraq. Keeping the peace among Iraq's fractious ethnic groups almost certainly will require a long-term commitment of U.S. troops.

During the Gulf War, the U.S. fielded 500,000 troops. A far smaller force is anticipated in a new attack on Iraq. But the GOP's Mr. Hoagland said the costs could be higher because of the expense of a new generation of smart missiles and bombs. In addition, the nature of the assault this time is expected to be different. During the Gulf War, U.S. troops bombed from above and sent tank-led troops in for a lightning sweep through the Iraqi desert. A new Iraq war could involve prolonged fighting in Baghdad and other Iraqi cities—even including house-to-house combat.

The Gulf War started with the Iraqi invasion of Kuwait in August 1990, which prompted a brief recession. The U.S. started bombing Iraq on Jan. 16, 1991, and called a halt to the ground offensive at the end of February.

With Iraq's invasion, oil prices spiked and consumer confidence in the U.S. plunged. But Mr. Lindsey said the chance of that happening again is "small." U.S. diplomats have been trying to get assurances from Saudi Arabia, Russia and other oil-producing states that they would make up for any lost Iraqi oil production. In addition, Mr. Lindsey said that the pumping equipment at the nation's Strategic Petroleum Reserve has been improved so oil is easier to tap, if necessary. Both the Bush and Clinton administrations, he said, wanted to "make sure you can pump oil out quickly."

On Thursday, Federal Reserve Chairman Alan Greenspan said he doubted a war would lead to recession because of the reduced dependence of the U.S. economy on oil. "I don't think that . . . the effect of oil as it stands at this particular stage, is large enough to impact the economy unless the hostilities are prolonged," Mr. Greenspan told the House Budget Committee. "If we go through a time frame such as the Gulf War, it is unlikely to have a significant impact on us."

The U.S. economy also has become less dependent on oil than it was in 1990, said Mark Zandi, chief economist at Economy.com, an economic consulting group in West Chester, Pa. A larger percentage of economic activity comes from services, as compared with energy-intensive manufacturers, he said. Many of those manufacturers also use more energy-efficient machinery.

## RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:40 having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:37 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. EDWARDS).

## HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 p.m. having arrived, the Senate will now resume consideration of H.R. 5005, which the clerk will report by title.

The assistant legislative clerk read as follows:

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

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

Thompson/Warner amendment No. 4513 (to amendment No. 4471), to strike title II, establishing the National Office for Combating Terrorism, and title III, developing the National Strategy for Combating Terrorism and Homeland Security Response for detection, prevention, protection, response, and recover to counter terrorist threats.

Lieberman amendment No. 4534 (to amendment No. 4513), to provide for a National Office for Combating Terrorism, and a National Strategy for Combating Terrorism and the Homeland Security Response.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, under an order previously entered, it is my understanding the Senator from West Virginia has the floor; is that right?

The PRESIDING OFFICER. The Senator is correct. Under the previous order, the Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the Chair and I thank the distinguished Democratic whip.

Mr. President, I want to be sure that Senators understand the parliamentary situation in the Senate at this point.

Last Thursday, the Senate voted on a motion to table the Thompson amendment to strike Titles II and III of the Lieberman substitute. Title II would establish a new National Office for Combating Terrorism within the Executive Office of the President whose Director would be confirmed by the Senate and made accountable to the Congress.

That is incredibly important. The National Office for Combating Terrorism was viewed by our good colleague, Senator LIEBERMAN as a central part of his homeland security bill. Title II was carried over from his original bill that was introduced last May, before the White House endorsed the idea of creating a new Department of Homeland Security.

But the motion to table the Thompson amendment to strike Title II failed

by a vote of 41-55 last Thursday. Senator LIEBERMAN conceded the victory to Senator THOMPSON, and urged the Senate to accept the "the next best idea." Senator LIEBERMAN offered a scaled down version of Titles II and III as a second degree amendment to the Thompson amendment.

It was at that point that I gained the floor and have held it until today.

So I find myself in a position that I had not intended—and not an easy position. I have often felt, in recent days, as if this 84-year-old man—soon to be 85; within a few days—is the only thing standing between a White House hungry for power and the safeguards in the Constitution. That is not bragging, that is lamenting.

This is not the way it ought to be. This will not go down as one of the Senate's shining moments. Historians will not look back at this debate and say that we fulfilled the role that was envisioned by the Framers.

This Senate should have the wisdom to stand for this institution and the Constitution. It is not our duty to protect the White House. It is our duty to protect the people—those people out there looking through their electronic lenses, the people who come here from day to day, these silent individuals who sit up here in the galleries. They do not have anything to say. They are not allowed to speak under the Senate rules, but they sit and watch us. They are looking over our shoulders, as it were, and they expect us to speak for them. They will help to ensure that the interests and the rights of the American people are protected. That is what these people want. They want us to assure that their interests—the people's interests—and the rights of the American people are protected.

I have been joined by a few voices on this floor in recent days, and I thank them. I feel that at least some Members are beginning to view this legislation as doing much more than merely setting up a new Department of Homeland Security.

I have also heard from citizens across the country who have urged me never to give up. Well, I can assure them that as long as I am privileged to serve in this body I will never give up defending the Constitution.

I heard Condoleezza Rice last Sunday, and I heard Dr. Rice the Sunday before.

I heard Secretary of State Powell last Sunday on television, and I heard him the Sunday before.

I have listened to Secretary Rumsfeld, and I have listened to Vice President CHENEY on television.

I have listened to various and sundry Senators on television. I have listened to various and sundry other spokespersons on television.

I read the op-ed piece of former Secretary of State Shultz in the newspaper Sunday a week ago.

I read the op-ed piece of former Secretary of State James Baker in the paper this past Sunday. And I hear many persons in the media—not everybody but some in the media—who seem to be intent upon galvanizing this and making this country ready for war. Not one of these people have I heard—maybe I missed it—refer to the Constitution. I take an oath, and so does every other Senator, to support and defend the Constitution of the United States against all enemies, foreign and domestic. Nobody says anything about the Constitution in this debate that is raging over the country.

There is a great fervor, and there is a great wave of opinion being created. And some in the media are doing it, or helping to create it. They have their minds made up. We are off to war.

I can hear the bugles, and I can see the flag. I can see the sunlight tinting on the bugles as they pass, and the flag I see going already. I can hear the guns. There is a great fervor here, and I hear the war drums being beaten. It is as though we have our minds made up. It is as though the President is already ready to go. And there is a developing hysteria in this country saying: Let us go to war. We have our minds made up.

Nobody stands up against that. But the Constitution is a barrier—this Constitution which I hold in my hand. This Constitution says Congress shall have the power to declare war. It doesn't say the President shall have power to declare war. It doesn't say the Secretary of State shall have power to declare war. Congress shall have power to declare war. But who is bothering to mention Congress? Who is bothering to mention the Constitution? It has become irrelevant, as far as some of the commentators and columnists and editorial writers are concerned, it seems to me. That is my impression. The Constitution has become just an old piece of paper. It was great 215 years ago but not now. Events have overtaken the Constitution. Nobody mentions it.

I haven't heard Dr. Condoleezza Rice mention it on her television appearances. I haven't heard the Secretary of State mention the Constitution. I haven't heard the Secretary of Defense mention the Constitution. I haven't heard the Vice President of the United States say a word about the Constitution when he discusses the business of going to war.

Has it become irrelevant? Are we to sit supinely by and be swept up in this national fervor that is being developed, that is being created to stampede this country into war? Are we to sit silently by?

Well, I want to assure the people that as long as I am privileged to serve in this body I will never give up defending the Constitution. And the Constitution is front and center to this business that we are discussing—the issue of war and peace. The Constitution is front and center.

Why, there are some who will get on the national television programs—they

do not invite me; I don't expect them to mention the Constitution. Why is it? Why is that?

Here is the Vice President, the President of this body right here under the Constitution, who can't address the Senate except by unanimous consent, but when he is on national television on these programs, why doesn't he mention the Constitution? Is this Constitution irrelevant? They take for granted, I suppose, that the United Nations is the chief authorizer of America marching off to war.

I am for what the President did the other day. He went to the United Nations. He has pointed the finger, as it were, at the United Nations, and said the United Nations has been recreant in its duty and recreant in its responsibility to enforce its resolutions. I think he laid down an excellent case in making that point.

But we also have a duty here. We have a duty to uphold this Constitution and what it says about declaration of war and what it says about Congress.

Why, it is as though the Constitution is something that went away with the winds of yesterday—gone.

I can assure the people I will never give up defending this Constitution. It is my sworn duty. At some point, however, I will have to relinquish the floor. And when I do, the Lieberman amendment presumably will be withdrawn and the Senate will vote on the Thompson amendment. That amendment, I presume, would pass, and titles II and III of the Lieberman substitute will be stricken from the bill.

Senator LIEBERMAN may be right that we don't have the votes to defeat the Thompson amendment. But what disturbs me most of all is that such an important element of the Lieberman substitute could be stricken from the bill so easily.

I am talking about the need to confirm the Director of the National Office for Combating Terrorism. So I just refer to that title as the Director.

Now, I don't think we should accept that verdict so easily.

It is unbelievable to me that people are not fighting harder for these proposals, not only in title II and title III, but throughout the entire bill. The issues raised by this legislation are too important to languish without more debate in the Senate.

I know I am not the only Senator who is concerned about this bill, but I have not heard enough voices speaking out on these important matters. There are many, many unanswered questions which Senators need to focus on and explore.

Of course, I can't fight this battle alone.

Meanwhile, the President and the House Republican leadership are already turning up the heat on the Senate to pass this bill quickly. The President even suggests that delaying this bill will endanger the lives of the American people.

That is nice rhetoric, Mr. President, but I doubt whether anyone believes

that argument. The people are not endangered by our thorough consideration of this legislation. The mistakes we avoid now are just as important as getting the Department in place quickly. What is not done well, generally, must be done over, and unintended consequences can take years to correct.

Nevertheless, pressures are building to expedite consideration of this bill. But in taking the floor, I hope to draw attention not only to the fallibility of passing this bill without a confirmable White House Homeland Security Director, but to other portions of this bill that should make Senators question the rush to enact this legislation so quickly.

My hope is that Senators will consider the gravity of this legislation before they simply jump on board somehow. This homeland security legislation will have important consequences not only for the lives of all Americans, but for the American way of life as well.

Mr. President, the security of the American people, on American soil, is, and has always been, our Government's most solemn responsibility. September 11 added a new dimension and urgency to that duty.

The bill before the Senate seeks to enhance our Government's ability to protect the American people from the devastation of another terrorist attack by creating a new Department of Homeland Security.

I have been for that. I was for that before President Bush was for it.

That is a very ambitious goal. It is a worthy and honorable goal born of commendable intentions. But if we do not move with great caution—if we do not slow down just a little bit—move with great caution—and deliberation in our work, we will risk undermining the very purpose to which we are dedicated.

My concerns about the proposed legislation are many. They are legion. While we can all embrace the concept of a new Department of Homeland Security, there are many, many pitfalls ahead for such an endeavor in the complicated new atmosphere of what has been called a "war" on terrorism.

I have made several comments about the threat that this new Department poses to the civil liberties—hear me now—to the civil liberties of the American people. And that is not just hyperbole.

Twenty-six leaders of conservative organizations across this country released a statement this month urging the Senate to exercise "restraint, caution, and deeper scrutiny before hastily granting unnecessary powers to a homeland security bureaucracy."

So, you see, that was not just ROBERT BYRD talking. That was not just an 84-year-old man, soon to be 85, talking.

Let me say that again. Twenty-six leaders of conservative—get that—conservative organizations across America released a statement this month urging the Senate to exercise—and I quote—

"restraint, caution, and deeper scrutiny before hastily granting unnecessary powers to a homeland security bureaucracy."

They wrote that:

[T]he popular enthusiasm for such a centralization and bureaucratization in the name of homeland security may prove unwise. Proposed legislation not only increases the growth of the federal bureaucracy but establishes an infrastructure, legal and institutional, which, if abused, could lead to serious restrictions on the personal freedoms and civil liberties of all Americans.

In case there are any latecomers to hearing this Senate, just now, I am talking about 26 leaders of conservative organizations across America who released a statement this month urging the Senate to slow down. They wrote—and I quote again:

[T]he popular enthusiasm for such a centralization and bureaucratization in the name of homeland security may prove unwise. Proposed legislation not only increases the growth of the federal bureaucracy but establishes an infrastructure, legal and institutional, which, if abused, could lead to serious restrictions on the personal freedoms and civil liberties of all Americans.

"All Americans."

September 11 was a shock to this Nation, and the fear, anger, and alarm it engendered have not, as yet, vanished. My concern is that in our zeal to see to it that terrorists never again defile our homeland, we will unwittingly cede some of our precious freedoms and blur the constitutional safeguards that have been the basis for our liberties and the check against an overreaching executive for 215 years, or thereabouts.

Let me make it clear that I am not accusing anyone of deliberately trying to exploit our national tragedy.

Rather, I believe that in our shock and revulsion, our collective determination to prevent further horrific attacks may change our Nation in fundamental ways that will eventually surprise and dismay all of us. How terribly ironic it would be if it were our response to the treachery of al-Qaida which dealt our constitutionally guaranteed freedoms the most devastating blow of them all.

I believe that all of those in Government, those of us in Government who are challenged with confronting the horrible reality of what happened on September 11, have not, even yet, come to grips with certain fundamental realities. We must all begin to face certain truths.

Terrorism is a worldwide force, and our ability to prevent it at home or contain it abroad is limited—is limited—at best.

An enemy in the shadows, living among us and using our own openness and freedoms to attack our infrastructure, and to cripple and kill our citizens, is unlike any enemy we have ever before known.

No Government Department can ever guarantee complete safety from this kind of threat in a world increasingly connected by trade, travel, electronic communication, migrating populations

and open borders. But, we can do our best to anticipate vulnerabilities, protect critical infrastructure, and respond to possible devastation or deliberately spread disease.

Yet, we can never be perfectly safe from the scourge of a terrorist attack. That is reality. And handing over our precious liberties and hard-won principles on such topics as worker rights, openness in government, the right to privacy and civil liberties—that is what is involved here—will not change that unfortunate and troubling reality. Such a course, blindly followed in the name of fighting terrorism, would be disastrous. Hear me. It is understandable that this administration, or any administration so consumed with the need to prevent another such horrific attack, might become so zealous and so focused on that mission that important freedoms could be trampled or relegated to a secondary position in our national life. If we are not vigilant, our country could be fundamentally changed before we realize it, in ways which we would all come to deeply regret.

Let me illustrate what I mean. Recent headlines have provided examples of the administration's strong penchant for secrecy, and its refusal to be confined by the law and the Constitution in its attempts to shield its actions from public scrutiny.

Last month, a Federal appeals court in Cincinnati issued a direct rebuke of attempts by the Administration to circumvent the Constitution—there is that magic word—by conducting deportation hearings in secret, whenever the government asserts that the object of the hearings might be linked to terrorism. Writing for the three-judge panel of the 6th Circuit Court of Appeals, Judge Damon J. Keith wrote, "A government operating in the shadow of secrecy stands in complete opposition to the society envisioned by the framers of our Constitution."

The Justice Department has already conducted hundreds of these hearings out of sight of the press and the public. In doing so, the administration has been able to decide the fate of each of these individuals without recrimination.

It may be that all of these hearings were conducted properly and fairly, but there is just no way for us to know. Like so many other actions that this administration has taken on behalf of our safety, we have no way of knowing whether what they have done was the right thing to do. Nobody in this administration or anywhere else is all wise. We have no way of knowing whether the steps they have taken have really helped to secure our safety. And we have no way of knowing whether the actions they took may have threatened our own liberties.

The administration argued that secrecy is necessary for these hearings because subjecting them to public scrutiny would compromise its fight against terrorism.

The court's concurring opinion addressed the merits of the government's position, but it pointed out that a reasonable solution to the administration's concerns could be achieved by requiring the Government to demonstrate the need for secrecy in each hearing on a case-by-case basis.

Ultimately, the Court of Appeals saw the Government's argument for what it is; namely, a danger to our liberty. The court took the clear-headed, clear-eyed position that excessive secrecy in matters such as these compromises the very principles of free and open government that the fight against terror is meant to protect.

Even with the best of intentions to justify the Government's actions, our freedoms are easily trampled when officials are allowed to exercise the power of the Government without exposing their actions to the light of day.

As Judge Keith wrote, "Democracies die behind closed doors."

We have also seen evidence in the news of what the executive branch is capable of when it is allowed to operate behind closed doors. On August 23, just last month, the front page of the Washington Post brought news of serious abuses of the laws that allow the Justice Department to conduct certain law enforcement activities in secret. Thank providence, thank heaven for a free press. That is what we want to keep. That is what we want to maintain—a free press.

The Washington Post article revealed that on May 17, a secret court that was created to oversee the Government's foreign intelligence activities rejected new rules proposed by the Department of Justice that would have expanded the ability of Federal investigators and prosecutors to operate in secret.

There you have it again—secret.

The Attorney General, John Ashcroft, wanted to tear down the walls between intelligence officials and law enforcement officials in the Department of Justice, allowing broad sharing of secret intelligence information among offices throughout the Department.

Mr. Ashcroft wanted to tear down these walls for a reason. The walls make it harder for his Department to circumvent the constitutional obstacles faced by his investigators in trying to hunt down terrorists. And like others in this administration, Mr. Ashcroft has little patience or concern for the Constitution now that he is a general in the President's "war on terror."

I voted for Mr. Ashcroft. I am not one of those who opposed his nomination. I was one of the few on this side of the aisle who voted for Mr. Ashcroft's nomination. I have to say, I am disappointed. But Mr. Ashcroft is not alone. Take a look at this administration.

Haven't you heard of the shadow government? That came to light a while back. All of a sudden, like the prophet's gourd, it just grew up overnight.

Here is this shadow government. I had not been told about it. After all, I am chairman of the Appropriations Committee in the Senate. I am not the top Democrat in the Senate, but I am the senior Democrat in the Senate. I hadn't been told anything about it. I am the President pro tempore of the Senate; in other words, the President, for the time being. If the Vice President is not in the chair, I am the President of the Senate. I hadn't been told anything about a shadow government.

Of course, I said time and time again how this great idea about a Homeland Security Department, at least the administration's great plans, suddenly sprang into existence, like Aphrodite, who sprang from the ocean foam, or like Minerva, who sprang from the forehead of Jove fully armed and fully clothed.

All of this was a secret. We didn't know anything about this thing hatched out of the bosom of the White House—this great plan hatched out by four individuals in the bowels of the White House. So this White House, this administration, has a penchant for secrecy.

I am not going to point the finger just at Mr. Ashcroft. I voted for him. On this side of the aisle, I voted for him. He used to serve in this body. But Mr. Ashcroft wanted to tear down these walls for a reason. I say again, the walls make it harder, as all walls do, to get wherever you are going. The walls make it harder for his Department, Mr. Ashcroft's Department, to circumvent, get around, the constitutional obstacles faced by his investigators in trying to hunt down terrorists.

He and others in this administration apparently have little patience and concern for the Constitution—here it is—now that he is a general in the President's war on terror. Today is September 17, 2002, in the year of Our Lord; this is the day, 215 years ago, when our forefathers signed their names, the framers of the Constitution signed their names on the Constitution. They had completed their work, which had begun back in May 1787, and they signed their names on this Constitution. This is the day. I will have more to say about that shortly.

But this secret court, which was created by Congress under the Foreign Intelligence Surveillance Act, recognized the danger of tearing down these protective walls. The act made it easier for Federal investigators to obtain evidence through wiretaps or physical searches when the evidence will be used for foreign intelligence purposes. Traditional criminal investigations require a higher standard for search warrants and wiretaps, to protect the constitutional rights of American citizens. By trying to tear down the wall between the two, the Attorney General was hoping to lower the bar for obtaining evidence for criminal investigations by expanding access to secret procedures used in foreign intelligence.

The wall between law enforcement and intelligence has always allowed for

cooperation in specific instances. In fact, this is the first time in the history of this secret court that an administration's request has been rejected. But this cooperation has previously been allowed to prosecute people such as CIA mole Aldrich Ames, whose crime was inextricably linked to foreign intelligence. If this wall had fallen, the Justice Department would be allowed to secretly investigate almost anyone who made an international phone call.

It is well to remember that the Patriot Act, passed in the aftermath of September 11, already lowered the bar for bypassing due process, privacy, and individual freedom. The Justice Department argues that the Patriot Act also authorizes the elimination of the wall between intelligence and law enforcement.

Couple this momentum with a new Department primed to root out terrorism at home and abroad and a powerful new Secretary of Homeland Security with intelligence powers that cut across traditional lines of authority, and one can easily see the possibility for abuse and for excess. That is why I am standing on the floor—trying to draw the attention of the public, trying to capture the attention of my colleagues, and trying to capture the media's attention. This is what I am talking about.

In reacting to the court's ruling, the Justice Department said:

We believe that the court's action unnecessarily narrowed the Patriot Act and limited our ability to fully utilize the authority Congress gave us.

Get that. It is the phrase "fully utilize" that gives me some special pause. Powers granted to this administration must continue to be checked. Oh, I tell you, they need to be checked. The need for checks on administrative powers is not just hypothetical, it is not just constitutional; I wish more would pay attention to that aspect of it. It has been well documented by recent Executive actions.

The most disturbing part of the secret court opinion is the revelation that the Justice Department has already been abusing this secret process, including 75 specific instances cited by the court in which FBI, or Justice officials, provided false statements in their applications for wiretaps and search orders, including one application signed by then-FBI Director Louis B. Freeh.

The court cited these examples as evidence of the need to keep a close eye on the Department's activities in order to prevent an environment in which cooperation becomes subordinated to the law enforcement agenda of the Attorney General.

While some of the abuses identified by the court occurred during the administration of former President Clinton, rather than President Bush, the need for oversight applies to every administration.

My concerns are not just based on who may be in the White House at a

particular moment. My concerns are based in the Constitution. These problems transcend administrations. Administrations may come and go, but the Constitution, like Tennyson's brook, goes on and on forever.

The war on terrorism must not be used by the executive branch—any executive branch. Mr. Bush certainly won't be in office forever. So one should look even beyond this administration, whatever the next administration will be. The war on terrorism must not be used by the executive branch as an excuse to ignore constitutional liberties behind closed doors and to destroy the delicate checks and balances that have made this Nation a great beacon for freedom to the world.

Congress is the leverer when it comes to precipitous actions. The Senate, in particular, is the place intended by the Framers for cooling off. A calm oasis where reason and cooler heads prevail against the heat of passion has always been found on the floor of the United States Senate, and I hope that we in this Chamber will again step up to that traditional calling as we consider this matter in these extraordinary times.

In an election year, all politicians like to claim we have an answer for even the Nation's most intractable problems, but in this case we underestimate the intelligence of the American people if we believe that merely offering them a new Department of Homeland Security will serve as currency to buy our way out of our continuing responsibilities under the Constitution.

The people know that such a Department is no panacea for protection of our homeland. They will never forgive us if we are lax in our duty to safeguard traditional freedoms and American values based on the Constitution as we rush to fashion a new Department, even though that Department is intended to protect the American people from the insidious danger of a virulent attack on our homeland.

In the name of homeland security, Congress must not be persuaded to grant broad authorities to the administration that, given more careful thought, we would not grant. The House has already passed legislation to grant the President the authority to waive worker protections for Federal employees, to place the new Department's inspector general under the thumb of the Homeland Security Secretary, to exempt the new Department from public disclosure laws, and to chip away at congressional control of the power of the purse.

Close examination of the President's plan shows that the administration is seeking more new powers which, unchecked, might be used to compromise the private lives of the American public.

Congress must never act so recklessly as to grant such broad statutory powers to any President, even in the quest for something so vital as protection of our own land. So vital, the war

on terror. We must exercise great caution. We must operate with the clear knowledge that once such powers are granted, they will reside in the White House with future Presidents—Republican and Democrat—and they will not be easily retrieved.

So once such powers are granted, they will not be easily retrieved. They will reside in the White House. And everyone who knows anything about the Constitution and about our experience in the political arena, anybody who knows anything about that, knows that no future President will likely return those powers, likely give up those powers, once they have been granted, and a Presidential veto in the future will be very difficult to overcome, as such a veto is usually difficult to overcome. Once the powers go down that avenue to the other end, they are gone for a long time, and the only way they can be retrieved is by overriding a Presidential veto. And, of course, the Senators and everyone know that will require a two-thirds vote. It will not make a difference whether the President is Democrat, Republican, or Independent; He will want to keep those powers. So be careful about granting them now.

Both the House-passed bill and the Lieberman bill substitute broad new authority to the administration to create this new Department, but neither bill ensures that Congress remain involved. Neither the House bill nor the Lieberman bill ensure that Congress remain involved throughout the implementation of the legislation.

Senator LIEBERMAN's bill takes steps to ensure that Congress is informed as the Department assumes its duties, but under his bill this information comes to us only after the fact. It is not enough just to be told how the administration intends to use these statutory powers. Congress needs to retain some prerogatives so Congress can temper and shape the administration's exercise of these new authorities and so Congress can temper and shape the new Department's exercise of the new authority.

So Congress has the responsibility to make sure we do not grant broad statutory powers to the President and then just simply walk away from the new Department, trusting that the administration will exercise restraint. Congress must remain involved to ensure that the orderly implementation of the Department does not flounder and that important worker rights and civil liberties do not fall into the breach.

Government reorganization is nothing novel. We have had Government reorganization before. And we have from time to time found new agencies created in the spotlight of political pressure and then left to languish and go awry in the twilight of mundane and practical purpose. This could be a mistake.

This administration, since the September 11 attacks, has announced at least three major governmental reorgani-

zations prior to the President's proposal to create a new Homeland Security Department.

Last December, in response to numerous media reports criticizing the Nation's porous borders, the administration proposed the consolidation of the Customs Service and the Immigration and Naturalization Service within the Justice Department.

Last March, following the mailing of two student visas by the Immigration and Naturalization Service to two of the September 11 hijackers 6 months after they crashed planes into the World Trade Center Towers, the administration announced the INS would be reorganized, split into a services bureau on the one hand and a separate enforcement bureau on the other.

Last May, following reports about intelligence failures by the FBI, the administration announced a reorganization of the FBI. These reorganizations have either produced very little or they have been replaced by subsequent additional reorganization proposals. It is as if we are spinning around in circles with little left to show for all of the energy expended but dizziness.

To avoid a similar fate to this new Department, I have an amendment to the Lieberman substitute that would ensure that the Congress continues to play a role. The Byrd amendment would create the superstructure of the new Department as outlined in the Lieberman bill, but would require Congress to pass separate, more detailed legislation to transfer the agencies, functions, and employees to it.

The Byrd amendment would not change the intent of the Lieberman bill. Let me say this, Senator LIEBERMAN is near the floor. I don't necessarily have to keep the floor for the next hour. I can under the order that had been entered. I get first recognition. But there is still an hour in this 2-hour period before the Senate goes back to the Interior appropriations bill. I welcome Mr. LIEBERMAN's questions. I am happy to discuss my amendment with him if he so desires before I give up the floor.

My amendment would immediately create a new Homeland Security Department. There it is. My amendment would create immediately a new Homeland Security Department. My amendment would immediately establish the superstructure of the six directorates outlined by the Governmental Affairs Committee. The Byrd amendment is not designed as an alternative to the Lieberman bill. I refer to it as the Lieberman bill. It is a bill that has been reported by the committee which Senator LIEBERMAN so ably chairs. So I refer to the bill as "the Lieberman bill." Its purpose is to strengthen. The purpose of my amendment is to strengthen the Lieberman bill. Its purpose is to ensure a strong Department capable of protecting our people. But its enactment would also ensure that the guiding hand of Congress would be there to help steer the course and stay the course.

What is more, any legislation submitted pursuant to this act would be referred to the Governmental Affairs Committee in the Senate so that my amendment, the Byrd amendment, would not deprive Senator LIEBERMAN or his committee of their jurisdiction or their expertise as we go about implementing this new Department which will have been created by the Lieberman bill. And, as I say, my amendment also creates that Department. My amendment allows the Department of Homeland Security to be established just as Senator LIEBERMAN envisioned. But the Byrd amendment would give Congress additional opportunities to sift through details concerning worker rights, civil liberties, secrecy, and various duties and functions. Equally important, it would ensure that the agencies and the offices to be transferred into the Department can continue to perform their important work of protecting the homeland while the groundwork is being laid for their move to the new Department.

Just recently we have all noted in the media that—I believe six persons were arrested in New York, in Buffalo, NY. Six persons were arrested. We didn't have any new Department of Homeland Security. There is no Department of Homeland Security that has been established. Yet the work of securing our homeland goes forward by the persons who man—man or woman, I use the word "man"—to mean both women and men—the persons who are on the borders, who are guarding the ports of entry, who are looking at the huge containers that come into our ports, the persons who—right today and last night at midnight and all through the hours of this day, yesterday, the day before, and tomorrow—will continue to do their work even though there is no Department of Homeland Security. The FBI was on the job. The FBI has been on the job. And so the FBI brought about the arrest of these six persons, and they are being held.

So I say to the President and to anyone else: Nobody is holding up the work of proceeding with the security of our country. The people who will secure this Nation under a Homeland Security Department, if and when one is established, are the same people who are right now, right this day, securing the homeland. These people have been on the job last night, 6 months ago, and they continue to do this work. They have expertise. They have experience. They are trained, and so on. So nobody is holding up the security of the country. Nobody is holding that up. That is going forward, as was seen when the FBI arrested the six persons.

So this is vital. Ongoing reorganizations can foster chaos and destroy worker morale. Orderliness and careful thought while we transition can avoid overlooked vulnerabilities and missed nuances which could signal another disaster.

With the Byrd amendment, the Lieberman bill would transfer agencies

and functions to the Department, one and two directorates at a time, beginning on February 3 of next year. This would then give Congress the opportunity to gauge and to monitor how the new Department is dealing with transition and what additional changes might be necessary. It would provide a means to quickly address the problems that will undoubtedly arise in the early phases of the Department's implementation and to guard against mistakes and missteps.

The Byrd amendment would not delay the implementation of the new Department one whit. It would actually expedite the implementation of the new Department by providing Congress with additional means to solve the quandaries that traditionally plague and delay and disrupt massive reorganizations.

Here we are talking about 170,000 employees. We are talking about 28 agencies and offices—some have said 30. So this is no minor movement. This is a major reorganization.

Moreover, the Congress could act to transfer agencies before the end of next year, roughly the same time period outlined by the Lieberman plan. When I say the Lieberman plan, I am talking about the bill that was adopted by the committee, which Mr. LIEBERMAN ably chaired. And that is the same time period outlined by the House bill. So who is holding up anything? Why shouldn't we stop, look, and listen here and do this thing in an orderly way? Do it right. Not necessarily do it now, do it here, but do it right. The Lieberman plan provides the President with a 1-year transition period, beginning 30 days after the date of enactment, effectively allowing up to 13 months before any agencies are transferred.

By then forcing the administration to come back to us—which the Byrd amendment would do—we can insist on knowing more about the plans of the administration with its penchant for secrecy—plans which are now only hazy outlines. So if Congress passes the Lieberman proposal or if Congress passes the House proposal, Congress will just be turning the thing over to the administration, lock, stock and barrel, and saying: Here it is, Mr. President. You take it. You have 13 months in which to do this, but it is all yours. Congress will just go off to the sidelines. Congress will have muzzled itself.

Whereas in the Byrd plan, the Byrd plan would also transfer these agencies. It would create a Homeland Security Department, and it would provide for the transaction, the movement of these various agencies, their personnel and their assets, into the new Department over the same period, 13 months, but it would do it in an orderly process in an orderly way, phased in, with Congress staying front and center and continuing to conduct oversight in this massive reorganization.

We must insist on assurances that in granting more powers to this adminis-

tration and to future administrations to investigate terrorism, we are not also granting powers to jeopardize the rights, privacy, or privileges of law-abiding citizens.

We must insist on assurances that the constitutional rights of Americans remain protected. We must insist that the constitutional control of the purse by the Congress is not compromised.

We must insist on assurances that Government reorganization will not be used as a convenient device to dismantle time-honored worker protections.

We must insist on the preservation of our Government's constitutional system of checks and balances and separation of powers. We have a responsibility to do our very best as a nation to get this thing right. If we are going to create a new Department, let's get it right.

We have a responsibility to ourselves and to future generations to ensure that, in our zeal to build a fortress against terrorism, we are not dismantling the fortress of our organic law—our Constitution—our liberties, and our American way of life.

#### ANNIVERSARY OF THE SIGNING OF THE CONSTITUTION

Madam President, as I stated earlier, today is September 17, the 215th anniversary of the signing of the Constitution in 1787. The Constitution is not noted for its soaring rhetoric or for the emotional power of its language, but it is nonetheless the most important document in our Nation's history.

Bar none, this Constitution that I hold in my hand is the most important document in our Nation's history. And it was meant, according to that eminent jurist John Marshall, to endure for ages—ages. It is not irrelevant. This is relevant. This Constitution is relevant. It is, front and center, relevant to today's issues.

The Declaration of Independence—which is also contained in this little book which I hold in my hand—with its ringing phrases, may have been a turning point in history, having laid out the case for breaking our ties with the Crown and setting us on the path to rebellion and liberty. There is no question in my mind but that it was a turning point.

But the Constitution is the foundation upon which our subsequent history was built. In its plain speech, it forms the blueprint for an entirely new form of government never before seen in history and, to my mind, not yet matched by any other.

I am happy to call attention to this day—to the anniversary of the signing of the Constitution.

As the Senate has been debating the homeland security bill, I have several times raised constitutional concerns about the way the homeland security bill is structured. In doing so, I have often felt like a voice crying out in the wilderness. Like a tree falling with no

one to hear it, I have wondered if I was in fact making any progress and wondered if I was making any sound while I was talking. Was I making any sound?

I hope my colleagues and the American people will look at the Constitution, and I hope they will read it and they will study it. It is not long. It is not a huge volume. It doesn't contain many pages, and it isn't difficult to understand. But each time I read it, it seems I always find something new. It is like my reading of the Bible. It is like my reading of Shakespeare. I always find what seems to be something new.

The Constitution is not written in fancy, lawyerlike phrases, or flowery 18th century language. Every citizen was meant to understand it and to participate in the exercise of government—that being the surest defense against tyranny.

It is much like the Magna Carta, which indeed is a taproot, and beyond—a taproot from which liberty sprang and a taproot from which our Constitution sprang—the Magna Carta, a great charter, the charter of the English people, which was signed by King John on June 15, 1215. That was simple, but it was easily understood. It was written for ordinary people to understand, and it has been read and reread by millions through the centuries.

So read the Constitution. Look to history. I believe my concerns will be shared.

Article I of the Constitution outlines the powers of the legislature. It vests with the Congress the power to make laws. There it is. The first section of the first article says that all legislative powers herein are vested in the Congress of the United States, which shall consist of a Senate and a House of Representatives. There it is—the power to make laws, the powers of the legislature.

Also, article I of the Constitution sets forth the qualifications and means of selecting representatives and the basic requirements for congressional operations.

Therein one will find in section 2 where the Constitution sets forth the creation of the House of Representatives, and then section 3 of the Constitution lays down the precepts and terms and the basis for the creation of the Senate.

The Constitution is a user manual for Congress, the operating software of the legislative branch. Article I, section 8, is the critical list of congressional powers, including subsection 18 which grants to Congress the power:

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

You heard it here. Powers may be vested by the Constitution in the Government and its Departments or officers. But the Congress must pass the