

Jeff Bingaman, Jim Jeffords, Joseph Lieberman, Bill Nelson of Florida, Blanche L. Lincoln, Byron L. Dorgan, Jack Reed, Patrick Leahy, Robert C. Byrd, Mary Landrieu, Max Baucus.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Byrd amendment No. 4480 to H.R. 5093, the Interior appropriations bill, shall be brought to a close? The yeas and nays are required under rule XXII, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The yeas and nays resulted—yeas 51, nays 47, as follows:

[Rollcall Vote No. 224 Leg.]

YEAS—51

Akaka	Dayton	Leahy
Allard	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Miller
Boxer	Feinstein	Murray
Breaux	Graham	Nelson (FL)
Byrd	Harkin	Nelson (NE)
Campbell	Hollings	Reed
Cantwell	Inouye	Reid
Carnahan	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Stabenow
Conrad	Kohl	Wellstone
Corzine	Landrieu	Wyden

NAYS—47

Allen	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Gramm	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith (NH)
Chafee	Hatch	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Craig	Inhofe	Stevens
Crapo	Kyl	Thomas
Daschle	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	McCain	Voinovich
Ensign	McConnell	Warner
Enzi	Murkowski	

NOT VOTING—2

Helms Torricelli

The PRESIDING OFFICER. On this vote, the yeas are 51. The nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. BYRD. Mr. President, can we have order?

The PRESIDING OFFICER. The Senate will come to order. The majority leader.

Mr. DASCHLE. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked on the Byrd amendment No. 4480, as amended.

The PRESIDING OFFICER. The Senator has that right. The motion is entered.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

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.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Lieberman substitute amendment No. 4471 for H.R. 5005, the Homeland Security bill.

Debbie Stabenow, Harry Reid, Charles Schumer, Evan Bayh, Mark Dayton, Jeff Sessions, John Edwards, Jim Jeffords, Joseph Lieberman, Bill Nelson of Florida, Blanche L. Lincoln, Byron L. Dorgan, Jack Reed, Patrick Leahy, Robert C. Byrd, Mary Landrieu, Max Baucus.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Lieberman amendment No. 4471 to H.R. 5005, an act to establish the Department of Homeland Security and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The result was announced—yeas 49, nays 49, as follows:

[Rollcall Vote No. 225 Leg.]

YEAS—49

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Graham	Nelson (NE)
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carnahan	Inouye	Rockefeller
Carper	Jeffords	Sarbanes
Chafee	Johnson	Schumer
Cleland	Kennedy	Stabenow
Clinton	Kerry	Wellstone
Conrad	Kohl	Wyden
Corzine	Landrieu	
Dayton	Leahy	

NAYS—49

Allard	Bunning	Craig
Allen	Burns	Crapo
Bennett	Campbell	Daschle
Bond	Cochran	DeWine
Brownback	Collins	Domenici

Ensign	Kyl	Smith (NH)
Enzi	Lott	Smith (OR)
Fitzgerald	Lugar	Snowe
Frist	McCain	Specter
Gramm	McConnell	Stevens
Grassley	Miller	Thomas
Gregg	Murkowski	Thompson
Hagel	Nickles	Thurmond
Hatch	Roberts	Voinovich
Hutchinson	Santorum	Warner
Hutchison	Sessions	
Inhofe	Shelby	

NOT VOTING—2

Helms Torricelli

The PRESIDING OFFICER (Mr. NELSON of Nebraska). On this vote, the yeas are 49, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. DASCHLE. Mr. President, I enter a motion to reconsider the vote by which cloture has not been invoked on the Lieberman substitute amendment No. 4471 to H.R. 5005, the homeland security legislation.

The PRESIDING OFFICER. The motion is entered.

Mr. DASCHLE. I thank the Chair.

AMENDMENT NO. 4738

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours of debate on the Gramm amendment, with the time to be equally divided between the Senator from Texas and the Senator from Connecticut or their designees.

The Senator from Texas.

Mr. GRAMM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Texas, Mr. GRAMM, for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, and Mr. HAGEL, proposes an amendment numbered 4738.

Mr. GRAMM. I ask unanimous consent the reading of the amendment be dispensed with.

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

The text of the amendment is printed in today's RECORD under "Amendments Submitted."

The PRESIDING OFFICER. Who yields time?

The majority leader.

Mr. DASCHLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I wanted to take a few minutes of leader time this morning, before we get into the debate on the amendment offered by the Senator from Texas, to talk about a concern that I have wanted to avoid talking about for weeks. I am very saddened by the fact that we have debated homeland security now for 4 weeks. I have noted on several occasions that there is no reason, on a bipartisan basis, this body cannot work

together to overcome our differences and to pass a meaningful and substantive bill dealing with homeland security.

Some have suggested that the delay has been politically motivated, and I have said: I am not willing to believe that. In fact, yesterday I said: We intend to give the President the benefit of the doubt.

Over the course of the last several weeks, as we have debated national security, the issue of war in Iraq has become more and more prominent. And again, as I go back to my experience in 1991 and 1992, during a similar period—the fall and winter prior and after an election—I expressed the concern that our politics in this climate could easily create a politicized environment and, in so doing, diminish, minimize, degrade the debate on an issue as grave as war.

No one here needs to be reminded of the consequences of war. No one here should have to be admonished about politicizing the debate about war. But, Mr. President, increasingly, over the course of the last several weeks, reports have surfaced which have led me to believe that indeed there are those who would politicize this war.

I was given a report about a recommendation made by Matthew Dowd, the pollster for the White House and the Republican National Committee. He told a victory dinner not long ago—I quote—“The No. 1 driver for our base motivationally is this war.”

Dowd said war could be beneficial to the GOP in the 2002 elections. And then I quote: “When an issue dominates the landscape like this one will dominate the landscape, I think through this election and probably for a long time to come, it puts Republicans on a very good footing.”

I thought: Well, perhaps that is a pollster. Perhaps pollsters are paid to say what is best regardless of what other considerations ought to be made. Pollsters are paid to tell you about the politics of issues. And were it left with pollsters, perhaps I would not be as concerned.

But then I read that Andy Card was asked: Well, why did this issue come before Washington and the country now? Why are we debating it in September? Where were we last year? Where were we last spring? And Mr. Card's answer was: “From a marketing point of view, you don't introduce new products in August.”

New products? War?

And then I listen to reports of the Vice President. The Vice President comes to fundraisers, as he did just recently in Kansas. The headline written in the paper the next day about the speech he gave to that fundraiser was: CHENEY talks about war: electing Taff would aid war effort.

And then we find a diskette discovered in Lafayette Park, a computer diskette that was lost somewhere between a Republican strategy meeting in the White House and the White House.

Advice was given by Karl Rove, and the quote on the disk was: “Focus on war.”

I guess, right from the beginning, I thought: Well, first it was pollsters, and then it was White House staff, and then it was the Vice President. And all along I was asked: Are you concerned about whether or not this war is politicized? And my answer, on every occasion, was: Yes. And then the followup question is: Is the White House politicizing the war? And I said: Without question, I can't bring myself to believe that it is. I can't believe any President or any administration would politicize the war. But then I read in the paper this morning, now even the President—the President is quoted in the Washington Post this morning as saying that the Democratic-controlled Senate is “not interested in the security of the American people.”

Not interested in the security of the American people?

You tell Senator INOUE he is not interested in the security of the American people. You tell those who fought in Vietnam and in World War II they are not interested in the security of the American people.

That is outrageous—outrageous.

The President ought to apologize to Senator INOUE and every veteran who has fought in every war who is a Democrat in the Senate. He ought to apologize to the American people.

That is wrong. We ought not politicize this war. We ought not politicize the rhetoric about war and life and death.

I was in Normandy just last year. I have been in national cemeteries all over this country. And I have never seen anything but stars—the Star of David and crosses on those markers. I have never seen “Republican” and “Democrat.”

This has to end, Mr. President. We have to get on with the business of our country. We have to rise to a higher level.

Our Founding Fathers would be embarrassed by what they are seeing going on right now.

We have to do better than this. Our standard of deportment ought to be better. Those who died gave their lives for better than what we are giving now.

So, Mr. President, it is not too late to end this politicization. It is not too late to forget the pollsters, forget the campaign fundraisers, forget making accusations about how interested in national security Democrats are; and let's get this job done right.

Let's rise to the occasion. That is what the American people are expecting. And we ought to give them no less.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I commend the distinguished Democratic leader for the position he has taken here today. I commend him for the restraint he has shown in his remarks.

I, too, was astounded upon reading this story in the Washington Post this morning. It reads as follows in part:

As he seeks to boost Republican candidates in the midterm elections, President Bush is increasing his emphasis on terrorism and national security, shedding his previous determination to demonstrate his concern about the flagging economy.

Four times in the past two days, Bush has suggested that democrats do not care about national security, saying on Monday that the Democratic-controlled Senate is “not interested in the security of the American people.” His remarks, intensifying a theme he introduced last month, were quickly seconded and disseminated by House Majority Whip Tom DeLay (R-Tex.).

At a fundraiser for GOP House candidate Adam Taff in Kansas Monday, Vice President Cheney said security would be bolstered if Taff were to defeat Rep. Dennis Moore (D-Kan.). “Cheney talks about Iraq at congressional fundraiser/Electing Taff would aid war effort,” read the headline in the Topeka Capital-Journal.

Mr. President, are we to believe this? Are we to believe that this President said what I have just quoted? This is the President who was going to change the tone in Washington.

I am terribly disappointed. We are entering an election. War clouds loom over this country. Yet the President would say the Democratic-controlled Senate is “not interested in the security of the American people.”

What about MAX CLELAND? Is he interested in the security of the American people? What about DANNY INOUE? Is he interested in the security of the American people?

I am disgusted by the tenor of the war debate that has seemingly overtaken this capital city. Here is the President of the Senate, the Vice President of the United States, out campaigning. The President is campaigning using war talk to win the election. The Vice President of the United States is barnstorming for Republican candidates. There, in at least one instance, he was telling voters that electing Republicans would aid the war effort.

Is the President determined to make his party—that great party of Abraham Lincoln—the war party? What would Abraham Lincoln have to say if he were here?

This war strategy seems to have been hatched by political strategists intent on winning the midterm election at any cost, even if that cost places this Nation on the brink of battle and the Nation's sons and daughters there on that brink. It is despicable. The distinguished majority leader used the word “outrageous.” He is exactly right. It is despicable that any President would attempt to use the serious matter of impending war as a tool in a campaign war.

I am not going to continue to be silent. The blood of our sons and daughters, our soldiers, sailors, and airmen,

has far more value than a few votes in a ballot box.

There is nothing more sobering than a decision to go to war, but the administration has turned the decision into a bumper sticker election theme. That is what I felt I saw in the beginning of this war on terrorism. It was being used politically also. It is clear now. It is out in the open. There it is.

For the President to suggest the Senate is not interested in the security of the American people is outrageous. It is insulting. It is wrong, wrong, wrong. To suggest that one is unpatriotic simply because one is affiliated with a certain party and may oppose a war that may have horrendous consequences is irresponsible—irresponsible. It is the worst kind of political opportunism.

I have been in this Congress 50 years. I have never seen a President of the United States or a Vice President of the United States stoop to such low level. It is your blood, your sons and daughters. Those who are looking at the Senate through the electronic lenses, it is your blood, your treasure.

For the first time in the history of the Republic, the Nation is considering a preemptive strike against a sovereign state. I will not be silenced. I have no brief for Iraq, but I am not going to be silenced. I will not give the benefit of the doubt to the President. I will give the benefit of the doubt to the Constitution. I will give the benefit of the doubt to the American people who will soon be called upon, if this President has his way, to give their sons and daughters, the blood of this country.

I do not defend the Iraqi regime. I do not justify its actions. But I also do not want to commit our sons and daughters to battle without a thorough understanding and a thorough debate. You silence me, if you can. There are others in this body who are going to speak up for their people.

This administration is making the war their battle cry. That is their bumper sticker politics. They are putting it front and center. They don't want to talk about domestic issues. They don't want to talk about those things. So they choose to make the war center stage. OK.

"Lay on, McDuff. And damn'd be him that first cries, 'Hold, enough!'"

My people in West Virginia expect me to speak out. If the Lord lets me live, I shall do that.

I also do not want to commit our sons and daughters to battle without a thorough understanding of the motivations, the strategies, the repercussions of that battle.

America fights wars, but America does not begin wars. This is my battle cry. This is yours. Each of you has sworn to support and defend the Constitution of the United States against all enemies foreign and domestic. There it is. That doesn't give this President, that doesn't give this Nation, a right to launch an unprovoked attack on a sovereign nation. America fights wars, but America does not start wars.

The American people have serious questions. The Nation's allies have serious questions. Members of this body have serious questions. These must be answered before going to war, and it is not now, nor was it ever, unpatriotic to ask questions.

Mr. President, I yield the floor.

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

Mr. DASCHLE. Mr. President, I ask unanimous consent that Senator INOUE have 5 minutes of my leader time.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, I certainly do not object to any time Senator INOUE wants, but we have come to debate an amendment on the homeland security bill, and I would like to have an opportunity to speak on it. I do not object.

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

Senator INOUE.

Mr. INOUE. Mr. President, the gentleman who resides at 1600 Pennsylvania Avenue is the President of the United States of America, and although the Constitution does not specifically state it, his most important chore is to keep our people united, to keep our Nation united.

Accordingly, this morning I am saddened by the reports of my leader, the majority leader, and my leader, Senator BYRD of West Virginia, because it appears that our administration and our President are making statements that only serve to divide our people.

I have been honored to serve as chairman of the Defense Appropriations Subcommittee. Four weeks ago, this subcommittee reported a bill unanimously. It is a Democratically controlled subcommittee, but it reported a measure unanimously. It went to the full committee, chaired by the Senator from West Virginia, and the committee reported that measure unanimously. It was reported to this floor, and by an almost unanimous vote—three Members had questions—it passed the Senate. That was 4 weeks ago. That was carried out by a Democratically controlled Senate.

There are a few footnotes in history that I think we should recall. I listened to all the talk shows on Sunday. I am a good listener. I very seldom speak on the floor. One statement was made that some of us in the early 1990s questioned the war in the Persian Gulf. I was one of those. This spokesperson said: They questioned the war because they said a lot of body bags would be returning, and just a few returned. But we should recall that the war ended at the border of Iraq. If we had gone into Baghdad, we would have had many body bags, unless the United States had decided to do the most inhuman thing and wipe out Baghdad—men, women, and children.

Some have now suggested: The war in Afghanistan has resulted in 100 casualties. That is not a war.

There is another footnote in history that we should recall. In that ancient war we engaged in 60 years ago, World War II, in the U.S. Army, 95 percent of the men in uniform had no spouses; there were no children. Five percent had spouses and children. In my regiment, 4 percent had spouses and children; 96 percent were young men, 18, 19, 20. We were ready. We had no strings attached.

Today, in the U.S. Army, over 77 percent of our men and women have spouses; they have children. We should be concerned about their sensitivities.

It is not easy going into combat. No one enters battle planning to become a hero. You just happen to be in the wrong place at the wrong time. If you stepped one foot to the right, the bullet would have missed you.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senator may have 5 additional minutes.

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

Mr. INOUE. Mr. President, there are those who plan war, and there are those who engage in war. As we have always said in the subcommittee and in the Appropriations Committee, in order to avoid war, we should be prepared for war. We voted for a bill to spend over \$356 billion. Does that suggest we are not concerned about the security of our people? And when we passed it unanimously—bipartisan, united—does that suggest we are not concerned about the security of this country?

I am concerned about the security of this country. I am concerned about what history will say about this Nation 50 years from now. Did we brutalize people or did we carry on ourselves as a civilized people? As my leader from West Virginia stated, to attack a nation that has not attacked us will go down in history as something of which we should not be proud.

Mr. President, I can assure you that this Democratically controlled Senate, and especially the Defense Appropriations Subcommittee, will support the President of the United States because that man is my President also. Certainly, I did not vote for him, but he is my President, and it grieves me when my President makes statements that divide this Nation.

I can assure you this is not a time for Democrats and Republicans to say I have more medals than you, and I have lost more limbs than you, and we have shed more blood than you. This is not the time for that. This is a time in which we should be working together, debating this issue. As the Senator from West Virginia said, it is American to question the President. It is American to debate the issues. I stand before you as a proud member of the Democratically controlled Senate.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. KERRY. Will the Senator from Texas yield?

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Texas has been recognized. The Senator controls 1 hour.

Mr. KERRY. Madam President, I ask if the Senator from Texas will allow me to speak about 5 minutes before he begins.

Mr. GRAMM. Madam President, the pending business is homeland security. I came over to offer an amendment with the Senator from Georgia. The majority leader has made a statement. The distinguished President pro tempore of the Senate has made a statement.

Our distinguished and beloved colleague from Hawaii has made a statement, and we are here to debate a war which we have an opportunity to do something about now. We are here to debate an issue where we have an opportunity to prevent anybody's blood from being spilled by having an effective homeland security program, and I want to exercise my right to speak on that issue.

I want to be brief on the subject, but accusing a President of starting a war for political reasons is a pretty serious accusation. This Senate, on several occasions, has passed resolutions that in the strongest terms called on the President, if he so decided, to use force against Iraq.

The United Nations has passed resolution after resolution that Saddam Hussein has rejected. So the idea that somehow this is a new problem and has suddenly been created out of whole cloth as we face the election simply will not bear up to scrutiny.

Secondly, there has been a confusion between two wars, and I think this is a very important issue. In listening to all of those quotes, most of what has been said has had to do with a force resolution which we are not debating today, which we will be debating next week or the week after.

As Jefferson said so long ago, good men with the same facts are prone to disagree. Based on our history in dealing with Saddam Hussein, based on the threat he poses, based on the new information on that threat which was made available by the British Intelligence Service and by the Prime Minister in today's paper, I reach a totally different conclusion than many of my Democrat colleagues in that I believe the President should be supported, and I believe a resolution of that support should pass in the Senate.

As clearly as I can say, I think internationalism is important, I think the United Nations has a role, but when we are talking about the lives and safety of Americans, I am not going to turn those lives and that safety over to the U.N.

As much as I love our allies, especially the British, I am not going to turn those lives and that safety over to our allies either. When we are talking about American lives, the buck stops

with us. No matter what the United Nations decides, we are never, ever, under any circumstances, going to delegate to the United Nations the protection of American lives.

Hopefully, the United Nations is going to come to their senses and support the President, but the idea that we ought to change this resolution, when we do debate it, to say we should work within the U.N. I am not willing to put American lives at risk based on what the U.N. may or may not do.

A final point, in response to the debate we just had, we have a commingling of two different wars. The first war is with Iraq, and we are going to debate that in 2 weeks. Everybody will have a chance to state their position. I wanted to make mine clear today. The second war, however, is the war on terrorism. That is the war we are fighting today. That is the debate we are having today.

When we started this debate as to giving the President the power to protect America from the horror we saw on September 11, it never crossed my mind we would end up with a Senate that was almost perfectly divided, where Republicans were on one side and Democrats, in the preponderance, were on the other.

There is one exception, apparently, on each side at the moment. I have not looked into people's hearts. We have not had a vote. I do not know where people are down to the individual Senator, but it certainly appears at the moment that we find ourselves in the extraordinary circumstance that we are almost perfectly divided along party lines over the issue of giving the President the power he has asked for to defend the American homeland and to defend our people.

Maybe this should not be a partisan issue, but if one defines a partisan issue as an issue that ends up being split along party lines then by that definition the debate we are engaged in right now, has become divided along partisan lines. The point I want to be sure people understand is the last statement quoted by the President was not about Iraq. It was about defending the American homeland.

Why has this become a political issue? I do not believe Iraq is going to be a political issue, despite the fact some of our colleagues today have expressed reservations about Iraq. I believe in the end the President is going to get a much stronger vote on a force resolution on Iraq today than we got in 1991. In the end, I do not believe Iraq is going to be a partisan political issue.

Why has homeland security divided the Senate right down the middle along partisan lines? The reason is, it involves a very tough choice. Government is about making tough choices. When one gets outside the civics class, it is not about black and white, right and wrong. It is about tough choices. It is about give and take. It is about giving up some things to have others. In fact, this whole idea that everything

can be broken down into all positive and all negative completely misrepresents the reality of the world.

There seems to be no objection to taking all of these Government agencies and putting them into one agency. So far as I know, 100 Senators are willing to do that. But remarkably, roughly half the Members of the Senate seem intent on taking away emergency powers the President had on September 11, but that would be taken away by the Lieberman bill that is before us.

I wonder how many Americans who are listening to this debate understand the proposal made by Senator LIEBERMAN, on behalf of the vast majority of Democrats, would actually weaken the President's ability to use national security powers to protect America. I do not think people understand that.

Our Nation has been attacked. Thousands of our citizens have been killed. The lives of countless thousands have been altered forever. We are debating homeland security. We have a proposal before the Senate that says we want to take powers away from President Bush, powers that President Clinton had, that Bush 41 had, that President Reagan had, that President Carter had, and powers they used.

Now, why are we debating such a proposal? How could it possibly make any sense that we were perfectly content to give every President since President Carter the ability to declare a national emergency and set aside business as usual in the Federal bureaucracy to respond to an emergency? But suddenly, as we are creating this Department, the majority proposes we take these powers away from President Bush.

In other words, we will put everybody in the Department, but the price the President would have to pay is less ability to use emergency powers than four of his predecessors have had. The President has rejected that. Does anyone blame him? Can anybody believe that any President, especially this President, would sit idly by while the Congress takes away powers that his four predecessors had?

I don't think anybody would think that is realistic. Why are we doing it? Why is the Senate almost evenly divided along partisan lines on this issue? The reason is, we are down to a tough choice. The tough choice is the following: To give the President the power to put the right person in the right place at the right time to do the right job in protecting lives, we have to change the way the Government operates. But there are powerful political interests that are opposed to making that change. And there are people who are committed to that system, the system we call the civil service system.

I remind my colleagues we have had study after study after study, studies headed by Paul Volcker, appointed by President Clinton to be head of the Federal Reserve bank. We have had studies by Lee Hamilton, a Democrat in the House, and Warren Rudman, our

beloved colleague from the Senate. In study after study concerning national security, they have concluded the following, and this is the Volcker Commission: "The current system is slow. It is legally trammelled and intellectually confused. It is impossible to explain to potential candidates. It is almost certainly not fulfilling the spirit of our mandate to hire the most meritorious candidates."

That is not President Bush talking. That is not Senator GRAMM talking. That is Paul Volcker talking. The Rudman-Hamilton bipartisan commission on national security concluded that we needed an agile, flexible personnel system. And then they wrote: "Today's civil service has become a drag on our national security. The morass of rules, regulation, and bureaucracy prevent the Government from hiring and retaining the workforce that is required to combat the threats of the future."

What the President has proposed is that he have the ability to streamline the process, and when it comes to a choice between national security and the status quo in the Government system, the status quo must yield. When it comes down to union work rules, business as usual, or the life and safety of our citizens, the President says that the system has to yield. Civil service rights are important, but they are not as important as the right of Americans to life and freedom. When our people's lives are at stake, business as usual in Washington has to yield.

The substitute that Senator MILLER and I have offered prohibits the ability to discriminate on the basis of race, color, creed, national origin, and arbitrary and capricious factors, but allows the President the flexibility to hire without waiting 6 months, to fire without waiting 18 months, to eliminate a system where 99 percent of Government employees get pay raises whether they received good evaluations or not.

I am not saying one side is right and one side is wrong. Obviously, I believe the President is right, and I believe my Democrat colleagues, other than Senator MILLER—and maybe some I don't know about—are wrong. Obviously, I believe that or I would not be standing up here. My opinion does not make their position morally inferior to my position. The division is about what is more important.

That is what the division is about. You have powerful concerns on both sides. You have the concern of national security and you have the concern of Government employees, one of the most powerful political constituencies in America.

I am not saying they are wrong and we are right. I am saying we disagree and we disagree almost perfectly along party lines and we have to make a choice. You cannot be for the primacy of existing work rules of the Federal Government and be for the primacy of national security. You have to make a decision.

I have made my choice. My choice is, when Government work rules impede

the protection of American lives, they have to yield. That is my choice. Many of my colleagues appear to have made a different choice.

What are we talking about when we are talking about changing union work rules? I have heard over and over and over again that we are eliminating merit and unions.

First, the substitute Senator MILLER and I have introduced is a substitute which strictly constrains the President to make decisions based on merit, and it limits it strictly to those areas where lives are at stake. I will give some concrete examples. In 1987, the Customs Service at Logan Airport in Boston tried to change the inspection facility to make it safer and more efficient. But there was a union work rule that said the inspection facility could not be changed in any significant way without a renegotiation of the union contract. So guess what. The Treasury employee labor union went to the FLRA and they overruled Customs. And Customs was not able to change the inspection facility.

Look, maybe when you are talking about trying to keep drugs out of the country or illegal aliens, those work rules are more important. But when you are talking about lives, are they more important? If we can increase the probability of keeping chemical or biological or nuclear weapons from coming in through an airport in America by changing the inspection facility, are we supposed to wait around 18 months to negotiate with the union about the ability to change the room in which the workers are working? Some of our colleagues think so, but I do not think so. I do not believe the American people think so.

Let me give another example. You all remember Barry McCaffrey, the general who was appointed by President Clinton to be drug czar. He made note in the San Francisco Examiner about the different work rules of the different Government agencies that were protecting America's borders:

Officials at one agency were actually forbidden to open the trunks of cars, a policy well known to drug dealers.

Look, maybe it makes sense to some people that a union work rule says people working for this agency or in this classification can not open a trunk at a border inspection, and so dope gets into the country or an illegal alien gets into the country. But if it is a nuclear weapon, does it make sense? Do we really think preserving that work rule that General McCaffrey pointed out was being gamed by drug dealers—do we really believe that is more important than keeping a nuclear weapon from getting into the United States?

That is the issue we are debating. I could go down the list and go on and on. In terms of deployment of the Border Patrol special task forces, the union work rule says you cannot deploy somebody where there is not a barber shop, a place of worship, or a dry cleaners. If we are just trying to

keep dope out of the country, or keep out illegal aliens, maybe that is not so unreasonable. I do not agree with that, but maybe I am wrong.

But when you are trying to keep weapons of mass destruction that can kill thousands of our people out of the country, do we really want to go to the FLRA and spend months and months and months trying to renegotiate this? Or do we want to give the President the power to say: Lives are at stake. As long as that is the case, under the emergency powers as President I am going to send the Border Patrol where there is no dry cleaner.

That is what we are talking about. That is what this issue is about—the ability to deploy on merit, when lives are at stake, instead of seniority. We are talking about the ability of agencies to set gun policies—something today they cannot do because of union work rules—and search policies. When we are worried about drugs getting into the country or contraband of various kinds, maybe we want to say the union work rules are more important than the search policy. So you have to go to FLRA to renegotiate with the union and spend 18 months doing it. But if lives are at stake, and we are talking about a nuclear weapon getting into New York Harbor, surely people see the difference. These are the kinds of things we are talking about.

Let me try to sum up where we are and what the issue is. We are divided almost perfectly along partisan lines with the exception of one Member on each side. Is preserving this old horse-and-buggy system from the 1950s—that was designed primarily to protect workers, not to get the job done—more important than enhancing the probability that we can protect lives? I say no. Some others say yes. That is the issue.

It ends up being contentious because we cannot have it both ways. You can't serve two masters. You have to make a choice, and the choice I choose is national security.

Madam President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 27 minutes.

Mr. GRAMM. Madam President, I ask for 10 minutes off the leader time.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

Mr. GRAMM. This time would not count toward our hour.

Madam President, Senator MILLER and I have spent 4 weeks listening and participating in this debate. We have looked at the House bill, a bill that the President says he would sign. We have looked at the President's proposal, a bill the President would sign. And we have looked at the bill before us, a bill the President has said he would veto. I do not know how we promote homeland security by giving the President a bill he would veto.

We have made some 25 changes in the President's proposal. Quite frankly, the

President has compromised more than I would have compromised had I been in his position. But the President wants to try to work on a bipartisan basis, and he wants this bill because lives are at stake.

We have limited, very narrowly limited, the President's power to use his emergency waiver in civil service. We have limited it by setting out parameters which he cannot violate in terms of his personnel flexibility. We have adopted some 95 percent of the Lieberman bill. We have adopted provisions of the House bill that represented bipartisan consensus. And we have talked to some 25 Members of the Senate and we have adopted some 18 measures that have been influenced by Members. The President has said this is as far as he can go.

What does that mean? Is it as far as he can go because he is mad about something? Is it as far as he can go because he is tired of the Democrats being successful, the Democrat leadership being successful in stopping him from doing what he wants? No. The President has said this is as far as he can go because he does not believe that he can effectively do the job if he gives up any more power. He doesn't believe if he gives up more power that he is getting the tools he needs to fight and win the war on terrorism. And I agree with him. I think he is right.

What are the issues we come to? The biggest issue we come down to is the issue I have already talked about at great lengths, and that is the issue of letting the President keep the powers that every President since Jimmy Carter has had. The Lieberman bill takes away power to declare a national emergency and to take extraordinary action that President Carter had, that President Reagan had, that President Bush had, and that President Clinton had. The President has said he is not going to let power that he had on September 11 be taken away in a bill that is supposed to be responding to September 11.

Interestingly enough, the President has offered a compromise where he will do things that President Clinton did not have to do when he used that power. He will have to notify Congress in advance, he will have to make public a declaration as to why he did what he did and his justification, something that President Clinton did not have to do. That is how much our President wants to get this job done. But has that been met by reasonable compromise on the other side? No.

We have a bill before us that takes that power away from the President. That is not going to happen. It is just not going to happen. We are not going to let it happen. The world may come to an end, but we are not going to take powers away from this President that four other Presidents have had when we are trying to fight and win a war on terrorism. It is just not going to happen.

The idea that it should be asked for is an idea that I would hate to have to

defend. I would hate to have to go back to Mexia and stand up in front of the print shop of my dear friend Dicky Flatt and explain to people that we are going to take some of power the President has to protect us and we are going to do it in a bill that is supposed to be responding to the death of thousands of our citizens in Washington and New York.

Maybe you can make that sale in Mexia. But I cannot. I am not that good at it. I am talking about political ability. I could not make that sale, and I don't believe anybody else can make that sale in Mexia. Maybe they can make that somewhere else. I don't think they can make that sale in Young and Harris Counties, either.

But that is the first issue. What we have gotten from our colleagues on the other side of this issue is a series of proposals that all boil down to one thing: The power of the unions, and the power of doing it the same old way it has been done since the 1950s will be preserved, and the power of the President in the name of national security will be reduced.

That is the first major issue where we are at an impasse. We have language now that was written by the Public Employee Labor Union. It was offered in the House. It was rejected in the House. Yet that is being proposed once again. The answer is no. I don't know what part of that old country and western song they do not understand. What part of "no" don't you understand? But the answer is no.

The second issue is: When lives are on the line, should the President have the ability to hire people and have the flexibility to do it without waiting 6 months? Should he have the power if somebody comes to work drunk in a national security department to fire him without having to go through 18 months of rigmarole? I think the answer is yes. I think the answer is yes. But, obviously, the people on the other side of this issue think the answer is no.

Those are the two issues. You might say this is a great big, old, thick bill, and you sent a great big, old, thick amendment.

Let me make it clear. I sent that amendment for myself, for Senator MILLER, for Senator THOMPSON, for the President, and for some 40 Members of the Senate. That was our best effort at a real compromise where the President gave up powers he really, honestly to God, believes he needs. But he did it to try to solve this problem and to get this Department established and to get on with defending national security.

The terrorists are not waiting for this debate. I don't know what they are doing. But it scares me.

When you look at these great big, thick bills, we are really apart only on two issues. What should come first? Business as usual, or national security? And should the President have the power when lives are at stake to hire, to promote, and to operate in the most

efficient manner possible this part of the Federal Government when the goal is to protect the lives and safety of our people? That, I think, is the choice.

Final point: Senator MILLER and I have worked hard with the White House for 4 weeks to provide what we believe is a compromise. It is the first real compromise that has been proposed, in my opinion. We want a vote on it. There is going to be an effort later by people on the other side of the issue to defy us that vote by amending our bill in these two critical areas so we never get an up-or-down vote on the President's program.

I am not crying foul by saying it is against the Senate rules to do that. I am not saying it is wrong to do it in terms of the way the Senate operates. I am saying I think the President deserves an up-or-down vote on his program. If you want to vote no, you have the right to vote no. But don't you think we ought to let the President have an opportunity to have his program voted on in the way he would like to see it voted on?

When that amendment is offered, we are going to use our rights under the Senate rules to hold out for a vote on our substitute. I believe in the end we will get it. I am sure some people on the other side of the aisle will stand up and say, you are delaying, you are delaying, you are doing this, you are doing that.

All we want is to vote. We have about 40 Members of the Senate who want to speak on it. They want to be heard. They will be heard. But, in the end, the President is going to be heard. In the end, the people are going to be heard. We want an up-or-down vote on the President's program.

I hope we are going to win. If we don't win, then we are going to be in a situation of trying to pass a bill the President will veto, and maybe we will have to wait until after the election and try again. That will mean that for 3 months we are not going to have the program in effect to protect national security. I think that is a risk. As a result, I want us to pass a bill.

I don't think any Member of the Senate can stand up and say they wanted to talk about this issue but Senator MILLER, Senator THOMPSON, or I have not been willing to try to work this thing out. But so far, we have seen no effort to work it out. So far it has been that we are going to take power away from the President, and if you don't like it, that is all right. Well, we don't like it, and it is not all right. It is not going to happen.

Ultimately, the debate ends here and the public has to make a decision. Is this a partisan issue? God knows that it should not be partisan. But, if you define partisan as being divided roughly along party lines, it is a partisan issue. It shouldn't be. I don't want it to be. There are many people on the other side of the aisle who don't want it to be, but it is.

In saying that, it is simply telling the truth. It is a terrible indictment of

us, a terrible indictment of the Senate, but it is telling the truth.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, I yield to the Senator from Illinois such time as he requires.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Madam President. And I thank the chairman of the Governmental Affairs Committee, Senator LIEBERMAN.

Let me say for the record, this bill—the creation of a Department of Homeland Security—is a bill that has had two births.

It was first born in our committee under Senator LIEBERMAN's leadership before President Bush proposed its creation. We worked for the creation of this Department—believing the concept was sound—to bring together, in reorganization, agencies that are necessary to protect America.

When we had a vote in the Governmental Affairs Committee on Senator LIEBERMAN's proposal, I was happy to support it, but not a single Republican member of the committee supported it.

Not 2 weeks later, President Bush came forward and said: I now support a Department of Homeland Security. And Senator LIEBERMAN said: We will work with you. Let us put together a plan to bring it forward in a bipartisan fashion because, harkening back to an earlier statement on this floor: There is no partisanship when it comes to protecting America or its security or its freedom.

Senator LIEBERMAN, working with Senator THOMPSON, tried to bring out a bill, a bipartisan bill, to address the President's concern about a Department of Homeland Security. I think we have done a good job. I think we have brought this bill to the floor in good faith. We had a lengthy hearing, many witnesses. Amendments were considered; some adopted and some rejected. The orderly process of Congress was followed. My hat is off to Senator LIEBERMAN for his leadership.

But to think we have spent 4 straight weeks on the floor of this Senate unable to bring this bill to closure is clear evidence that there are people on this floor who do not want to see this bill passed in any form.

When the Senator from Texas comes up and says: Well, you have to understand, we are going to bring an amendment, and a few of our colleagues would like to speak on it on the floor, perhaps 40 Senators would like to speak on it on the floor—well, be prepared, that just means a filibuster by another name.

It means, frankly, there are forces at work on this floor that do not want to see this bill passed. They want to drag it out not 4 weeks or 6 weeks but 8 weeks and beyond. They have some other agenda other than giving the President a Department of Homeland Security. That is unfortunate.

I think Senator LIEBERMAN and the members of the committee have shown good faith from the start. We have come to the floor day after weary day, many times with absolutely nothing happening, except the threat of another filibuster. And here we stand. Here we stand this day without the Department of Homeland Security bill passing the Senate. I think it is unfortunate. I think it is sad.

Earlier, the Senator from Texas said: Now, some of those who spoke earlier, such as Senator DASCHLE, Senator BYRD, and Senator INOUE, about their concern over the President's statements that raised a question as to whether the Democrat-controlled Senate was, in fact, committed to the security of America—the Senator from Texas said: Understand, he was not referring to the war on Iraq. He was only referring to this bill, the Department of Homeland Security.

Well, I am glad the Senator from Texas made the distinction. But it does not allay my fears that what we have emerging is partisanship when it comes to the security of America and the rhetoric that is coming out of the campaign forces, the campaign machine of the White House. It is no comfort to me to be told: Oh, they are just questioning your patriotism when it comes to the war on terrorism, not on the war on Iraq. I am sorry, that is unacceptable.

When September 11 occurred last year, President Bush did not even have to make the appeal to Congress. Within hours, Congress came together on a bipartisan basis. We came together and not only sang "God Bless America," we also came together, within a few days, to give this President the authority and resources he needed to wage the war on terrorism.

There was never any question that this Nation would stand together—Democrats, Republicans, and Independents—and we did, as did Capitol Hill. We have stood with this President.

For those who are trying to fire up the campaign rhetoric for this coming election, questioning the patriotism of anyone in the Senate who would even offer an amendment to the Department of Homeland Security bill goes too far. Whether this questioning of patriotism is over the war on terrorism or the war on Iraq, it is entirely inappropriate. It is an affront to the many veterans in this Senate on both sides. It is an affront to many of us who believe this country is something we hold dear, and who try, in every single vote we cast, to keep that in mind.

Mr. REID. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield to the Senator for a question.

Mr. REID. Did the Senator hear the statement of Senator DASCHLE, the majority leader, today?

Mr. DURBIN. Yes, I did.

Mr. REID. Did the Senator hear the statement of the Presidential pollster, and also that of Karl Rove? And did the

Senator hear, as I did, the direct quotes that they wanted a strategy for the campaigns that dealt with the war? Did the Senator hear that?

Mr. DURBIN. Yes, I did.

Mr. REID. That didn't seem to say anything about homeland security, did it?

Mr. DURBIN. Not a bit. It suggested to me, I say to the Senator from Nevada, coming back to this bill, when we go to the merits of this debate, let's be very honest about what this concerns.

This is a question about moving some 150,000 or 170,000 employees of the Federal Government under a new roof called the Department of Homeland Security. I support it. I supported it when Senator LIEBERMAN offered it. I supported it when the President suggested it. I still support it.

But the question before us today is, for 40,000 or 50,000 of these employees, when they come under that new roof, will they bring with them collective bargaining rights that they have had, have earned, have worked for, perhaps, all of their adult lives?

There are those who argue—and you have heard it from the Senator from Texas—once they come into this new Department, we can't afford to run the risk that someone who belongs to a labor union can really rise to the challenge of defending America.

Pardon me, Madam President. Do I recall correctly those profiles in courage of September 11, 2001, of which so many of us are so proud? Did you stop and think for a moment that those New York firefighters, going up those stairs in those burning buildings to rescue people did not know—complete strangers—doing their duty to their country, meeting the duty of their profession—did we stop and reflect, for a moment, that they were carrying, perhaps in their wallet, next to the picture of their family, a union card? Did anyone question their patriotism, their loyalty to our country, their devotion to so many people?

Oh, and yet today we hear speech after speech: We just can't run the risk of letting people who are members of labor unions in this situation, public employees—

Mr. GRAMM. Will the Senator yield? If the Senator is going to quote me, he ought to do it accurately.

Mr. DURBIN. Madam President, I ask that order be restored in the Senate.

The PRESIDING OFFICER. The Senator from Illinois has the floor.

Mr. REID. Will the Senator yield for a question?

Mr. DURBIN. I yield to the Senator from Nevada for a question.

Mr. REID. The Senator would agree, would he not, that the debate over this labor issue is one that we should have, and it has nothing to do with patriotism? I see on the floor one of the sponsors of the amendment, the Senator from Georgia, who is a distinguished American. He has written a book about the Marine Corps. No one can question his patriotism, his qualifications.

Wouldn't you agree a debate on labor-management relations is something we should have, and it has nothing to do with patriotism?

I have listened to the Senator from Georgia and how strongly he feels about Federal employees, and how we have to change, in his opinion, the way employees are treated. But that is an issue, would the Senator agree, that has nothing to do with patriotism?

Mr. DURBIN. I agree completely with the Senator from Nevada. For the Vice President, the President, or their campaign advisers to suggest that if we disagree on a labor-management issue in this new Department, we really are not committed to the freedom and security of America goes way too far. And I am afraid that is the point that was raised on the floor today and needs to be revisited.

I will yield to the Senator from Texas, if he has a question.

Mr. GRAMM. Yes. The only point I was going to make is, never in my remarks did I say anything about people being a member of a union. And if I am going to be quoted—and I like to be quoted; and I think it improves the Senator's speech to quote me—I would like him to do it accurately.

I never said anything about a member of a union. I simply said that when you have work rules that prevent you from deploying more patrol agents where there is no laundry, or where you are not able to change an inspection room without renegotiating a union contract, and lives are at stake, there needs to be some give. That is all I said. I did not say anything about joining a union or never mentioned a union in terms of the right of people to belong to it or their union membership or lack thereof having any relevance to do with this whatsoever.

Mr. DURBIN. I thank the Senator from Texas, but that is a distinction without a difference. To say, on one hand, I am not against labor unions, I am just against collective bargaining rights, is to get to the heart of the issue.

Let me give you an illustration that makes my point.

After September 11, 2001, we discovered that most of the terrorists responsible for the World Trade Center were coming over the northern border of the United States from Canada. We said that we were going to beef up efforts at the border to check people coming in so that others did not come in to threaten the United States. This administration said it. The Border Patrol said it. And do you know what. We did not do it. Two Border Patrol agents came forward and testified before a committee of Congress that it was all talk, we weren't putting the resources and the manpower in the right place to protect America after September 11, 2001.

These were Federal employees, members of labor unions with collective bargaining rights. Do you know what happened to them, I ask the Senator

from Texas? Do you have any idea? They were fired from their jobs for testifying before Congress, terminated from their employment. Of course, there was a hearing because they had collective bargaining rights, and these whistleblowers were restored to their positions.

If we are going to talk about what is at stake, let me tell you this.

Mr. GRAMM. Will the Senator yield on that?

Mr. DURBIN. I will after I have made my point. The point I am making at this juncture is that collective bargaining rights make a difference. It is not a question about how bright the light is over the coffee pot for the employees taking their break and what color uniforms they are wearing. That is, I am afraid, a ridiculous extreme when we look at collective bargaining rights. It is the right of an individual employee at our Border Patrol to be able to stand before a committee of Congress and say: I don't care what my boss is telling you; I don't care what they are saying in their press release; they are not doing the job to protect America.

For these Border Patrol agents to stand up and tell us the truth under oath before a committee of Congress should not be grounds for termination. But they were. Thank goodness they had collective bargaining rights and their jobs were restored. I don't believe being a member of a labor union automatically qualifies you to be ready to fight for our Nation's security and be involved in intelligence gathering, but it certainly does not disqualify you. There are good, loyal, patriotic Americans who have collective bargaining rights.

Make no mistake, the bill reported to the Senate gives this President the authority, which he needs; if any individual employee, because of their new job assignments or because of the sensitivity of their assignments, needs to be removed from a bargaining unit, there is a way to do it, a legitimate, honest way. That is the point we are debating. To suggest that that has something to do with love of America and patriotism—I don't see it.

What we have before us and what concerns the Senator from Texas is, we have a bipartisan group that has come together and said: We have come up with a compromise. Let's deal with it.

As Senator Bumpers of Arkansas used to say: The Senator from Texas hates this bipartisan compromise like the devil hates holy water. He is afraid if we bring this to the floor and get a vote supporting the bipartisan position, all of his arguments and the President's arguments are weakened and disappear. That is what concerns him about this process and why he is promising 40 Senators who will speak interminably and drag this bill on for another 4 weeks.

If the President needs a Department of Homeland Security—and I believe he does—let's have this up-or-down vote.

Let's decide where the will of the Senate is going. Don't be afraid of the will of the people. Don't be afraid to say that collective bargaining does not disqualify people from defending America and from serving their Nation proudly.

Many of the people in these agencies are veterans who have served this Nation with pride and have risked their lives for the flag. To say as they come to a new Department that they somehow have to give up their rights to collective bargaining is unfair.

It has been said that it takes up to a year to fire an employee under civil service. That is a total myth. During their first year, employees can be terminated without notice, and 36 percent of new employees were removed during their probationary period in the year 2001. Any employee can be terminated with 30 days' notice.

Incidentally, in fiscal year 2000, it was said that out of 1.8 million Federal employees, only 6 were fired because they were found incapable of doing their job; and in 2001, only 3 out of 1.8 million were fired. These statistics grossly underestimate the number of Federal employees fired each year. The Republican claim that only three people were fired in 2001 refers to the three employees who were immediately removed for national security reasons only. In fiscal year 2001, 8,920 Federal employees were terminated and removed for disciplinary reasons.

The fact is, under civil service, employees can be removed. The fact is, under the bill that came out of the Governmental Affairs Committee, there is a procedure in national security for the President to make that determination. That is an issue.

I respect the Senator from Texas and the Senator from Georgia for what they are bringing as a substitute measure. Let me tell you this: They are leaving out some very critical elements of the bill brought out of the Governmental Affairs Committee.

After September 11 of last year, I focused on one particular issue that troubled me. I learned in the months leading up to it of the gross inadequacy of the information technology of the agencies of our Government relating to law enforcement and intelligence, the FBI being the classic example of an agency dealing with the most primitive technology.

I have worked for over a year to try to bring modernization of computers and information technology into intelligence gathering and law enforcement. I have spoken to everyone—Attorney General Ashcroft, FBI Director Mueller, the Vice President, as well as the President of the United States—about what I consider to be one of the glaring examples of our inability to deal with terrorism.

As a result, I prepared and offered an amendment which was on the Governmental Affairs bill that came to the floor and is still pending today. This amendment establishes that at the

Federal Government level, we will start blending together the computer architecture of different agencies of the Federal Government so that they are not only modern but they are interoperable, so they can communicate with one another, pass information along. If the FBI has a most wanted list or danger list, they can pass that along to the Federal Aviation Administration and the Immigration and Naturalization Service.

I am sorry to report that does not exist today. I worked long and hard on this amendment. It had the support of all of my colleagues on the Governmental Affairs Committee. They believe, as I do, that this is a critical element in the defense of America.

But the substitute amendment being offered by the Senator from Texas doesn't include this provision. They have decided it is unnecessary, or at least they have not addressed it. I sincerely hope they will at least reconsider that if we do bring this forward and this substitute becomes the bill we are going to amend, they could introduce a motion of cloture, for example, raise germaneness questions.

If we don't include it, some element of information technology in a Department of Homeland Security, we are fooling ourselves. We are saying we are creating a new Department that has a brandnew nameplate on the door with 170,000 employees but with computers that are inadequate to the job.

When I spoke to Gov. Tom Ridge about this amendment, he said: I support this. It is a force multiplier. That means it takes the existing resources of our Government and makes them that much more effective in fighting terrorism.

The substitute offered by the Senator from Texas does not include that. That is sad.

Frankly, it may be a political victory for his substitute to prevail, but it will not be a victory in the war against terrorism. We should put the weapons in place, the arsenal we need to protect America on a bipartisan basis, looking not only to employees of the Department but also the resources and technology available in the Department.

It has been made clear on this floor that when it comes to the security of the Nation, there should not be any partisanship whatsoever. We can stand here as Americans and Members of the Senate and debate the provisions of this bill and others, and no one should call into question our patriotism.

There is no reason we should take the roles and lives of 40,000 or 50,000 new employees of this Department and say it is basically going to be impossible for them to serve their Nation and to have their rights as employees respected. We can do both. They have already proven we can do both. To try to eliminate their rights to collective bargaining or to reduce them dramatically to a point where they are meaningless is unfair to the men and women who have served us so well in so many

different ways, who are proud to have these collective bargaining rights and be members of labor unions.

Before we adopt this substitute, consider the elements it does not include. One of the elements is the fact that it does not deal with the information technology that is essential to fighting a war on terrorism in the 21st century. Their bill is silent on what I consider to be one of the most important elements of this war and one of the most important weapons we can use to bring it to a successful conclusion.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, I yield myself a moment or two or as much time as I require. I will yield in a moment so Senator MILLER may speak.

While he was on the floor, I wanted to thank Senator DURBIN for the substantial contribution he made to the committee's proposal for a Department of Homeland Security overall and the specific, unique, very valuable proposal he made regarding information technology.

This is really a key to all sorts of activities in our world today, including homeland security; the ability to interconnect levels of our government, different agencies that will be part of the new Department and Federal, State, county, and local governments. I appreciate it.

Senator GRAMM and I have had discussions, and at some point, as the most controversial parts of this discussion work their way to either an agreement or the Senate works its will, I hope we can sit and talk about sections of our committee bill, such as Senator DURBIN's, which are not partisan; they are good Government, with a capital G, good. We ought to be able to reach a bipartisan agreement to include that in whatever Department of Homeland Security we create.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. GRAMM. Madam President, will the Senator yield for 2 minutes? I do not want the Senator to lose the floor.

Mr. MILLER. I yield.

Mr. GRAMM. Madam President, I would like to make a couple responses. First, let me give you the actual figures of people being fired from the Federal Government. There are 1.8 million people on the Federal payroll. In the year 2001, three of them were fired outright. The previous administration, the Clinton administration, found that 64,340 Federal workers were poor performers.

Mr. DURBIN. Will the Senator yield for a question?

Mr. GRAMM. Let me finish my point. Only 434 of them went through the removal process, and that process takes as long as 18 months, and many of them remained on the payroll. That is the first point.

The second point, the Senator talks about INS. In 1990, at the Honolulu Air-

port, the Immigration and Naturalization Service was worried about a surge in flights and the long lines, and they wanted to hire more INS agents to enforce the law.

The American Federation of Government Employees filed a complaint with the National Labor Relations Board saying, under their contract, INS could not hire more agents without renegotiating its union contract. Guess what. The National Labor Relations Board ruled in favor of the union, prohibiting the people from being hired.

The Senator talks about a vote. I ask unanimous consent that on Friday morning at 10 o'clock, we have an up-or-down vote on the substitute I have offered with Senator MILLER. That way, there will be no doubt about the fact we are ready to bring it to a vote at that point. We would like an up-or-down vote on our amendment at 10 o'clock.

Mr. LIEBERMAN. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. GRAMM. Madam President, the point I want to make—and I am sorry I had to put our colleague in a position like that to object.

Mr. DURBIN. Will the Senator yield?

Mr. GRAMM. I will yield, but the point I want to make is we want an up-or-down vote on our amendment. This is the President's substitute, and the President's supporters should have a chance to speak on it. We have gone on for 4 weeks on this bill, not because of what supporters of the President have done, but because we have had amendments offered, probably 90 percent of that time taken up by people who do not support the President's position. That is where we are.

I will be happy to yield to the Senator.

Mr. LIEBERMAN. Will the Senator yield for a question?

Mr. GRAMM. Yes.

Mr. LIEBERMAN. Madam President, of course, we want to have a vote on the substitute amendment. What is the basis for denying Senators the normal privilege, which the Senator from Texas has exercised and utilized on so many occasions, to offer a second-degree amendment to his substitute so the Senate can work its will, dispose of it, and then go to an up-or-down vote?

Mr. GRAMM. The question is a totally fair question. As I said earlier, people have a right to offer amendments, but the point is, this is the President's best effort to reach a compromise with the Senator and with those who oppose his proposal, and he would like to have an up-or-down vote on his compromise as we have written it, not as it would be rewritten by others. The Senator has every right to offer an amendment. We have every right to resist it and not let the Senator have a vote on it. But we would like at some point to have people vote yes or no on the President's proposal. That is all.

Mr. LIEBERMAN. Madam President, in responding, I want the record to

show—and I yield myself a moment more—we are fully prepared to have an up-or-down vote on Senator GRAMM's substitute, but after we have the right to offer an amendment. That is the way the Senate works. That is why I objected.

Mr. GRAMM. There is the rub. I yield to the Senator.

Mr. DURBIN. Madam President, I thank the Senator from Texas. Is the Senator from Texas aware of the fact he is mistaken again in saying only 3 Federal employees out of 1.8 million were terminated, when the official figures show in fiscal year 2001, 8,920 Federal employees were terminated, and in fiscal year 2000, 8,400 Federal employees were fired for reasons related to poor performance? Is the Senator aware of those numbers?

Mr. GRAMM. Let me respond—

Mr. DURBIN. Let me complete my question and then I will sit down. Is he aware, as he continues to use the INS example at the Honolulu Airport, that after the ruling he referred to, they did work out differences with the workers and established the 9 p.m. to 5 a.m. graveyard shift once they worked out negotiations?

Mr. GRAMM. Does the Senator know how long it took to work it out?

Mr. DURBIN. I am sure the time it took for the lawsuit. It took a long time.

Mr. GRAMM. While they were working it out, what if somebody brought a chemical weapon in to Hawaii where my kinfolk live. What if they had been killed?

I am constantly capable of misstating facts and figures. I always tell my children: Do not get into a debate about facts, look them up. All I am saying is, the facts I have—and I do have as much faith in mine as anybody else's—say the Clinton administration found 64,340 Federal workers to be poor performers; 434 went through the process to be terminated, and that can take as long as 18 months.

Maybe it does not matter unless somebody's life is at stake. That is all I am saying. If somebody's life is at stake, you do not do business as usual. You can defend business as usual, but when it puts somebody's life at stake, when a man, woman, or child has their life at stake, business as usual is not usual. I think there is some urgency here. That is all I am saying. I am not trying to indict any of these work rules or say they are crazy. I would hate to have to run my business under these work rules. I would go broke. All I am saying is, when people's lives are at stake, there is some urgency. I yield back to the Senator from Georgia.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Georgia.

Mr. MILLER. Madam President, how much time is remaining for our side of the argument?

The PRESIDING OFFICER. The Senator has 23½ minutes.

Mr. MILLER. I thank the Chair.

Madam President, I rise to speak not on the subject of the war against Iraq—

that is for another day—but I rise to speak on the homeland security substitute that Senators GRAMM, THOMPSON, and I, and about 40 other Senators, have sponsored that the President says he supports and will sign.

We do not teach our children the lessons of Aesop's Fables as much anymore. The wisdom of Sesame Street and the Cat in the Hat have taken their place. There is one fable I learned at my mother's knee, sitting around an open fireplace, that I believe is pertinent to this debate on homeland security that has so divided this Senate along party lines.

It goes like this: A certain man had several sons who were always quarreling with one another, and try as he might, he could not get them to live together in harmony. So he was determined to convince them of their folly. Bidding them fetch a bundle of sticks, he invited each in turn to break it across his knee. All tried and all failed.

Then he undid the bundle and handed them the sticks one at a time, which they had no difficulty at all in breaking.

There, my boys, said he. United you will be more than a match for your enemies, but if you quarrel and separate, your weakness will put you at the mercy of all those who attack you.

That is a lesson for today. That is a lesson for the ages. That is a lesson for this Senate and the House, for Democrats and Republicans, for the executive and legislative branches of Government. I am one of the most junior Members of this body. I do not have the experience and I have not seen the number of bills most other Members have, so my historical perspective, admittedly, is limited. But in the short time I have been here, I have never seen such a clear choice as there is on this issue.

For me, there are no shades of gray. It is clear cut. Why, in the name of homeland security, do we want to take the power away from the President that he possessed on 9/11? It is power Jimmy Carter had, power Ronald Reagan had, power the first President Bush had, and power Bill Clinton had. Do we really want to face the voters with that position, that vote written large on our foreheads like a scarlet letter, and even larger on a 36-inch television ad two weeks before the election?

We must give the President the flexibility to respond to terrorism on a moment's notice. He has to be able to shift resources, including personnel, at the blink of an eye. When the Civil Service was created well over a century ago, it had a worthy goal, to create a professional workforce free of cronyism. Back then, it was valid. But all too often in Government, we pass laws to fix the problems of the moment and then we keep those laws on the books for years without ever following up to see if they are still needed.

The truth of the matter is a solution for the 19th century is posing a prob-

lem for the 21st century, especially when this country is threatened in such a different and sinister way.

I do not want to belabor the point about how long it takes to hire a person or how long it takes to fire a person. I just know it is too long. I also know that a Federal worker can be caught knee-walking drunk and he cannot be fired for 30 days, and then he has endless appeals. Productivity should be the name of the game, and we lose productivity when we have such a law. That is no way to wage a war.

Do we not realize there is another disaster looming just around the corner, where American lives are going to be lost? And another one after that? And that those attacks against Americans and against our country will occur for the rest of our lives? Would anyone dare suggest that is not going to happen? Would anyone suggest 9/11 was some kind of isolated phenomenon never to happen on American soil again? Surely no one, even the most naive optimist, believes that. Surely no one in this body believes that.

Over 60,000 terrorists worldwide have already been identified. Terrorist cells in some unlikely places, such as Lackawanna, NY, have been discovered. They are all around us, they are everywhere, and when these other attacks come, as certainly they will, do you not think Americans throughout this great land are going to look back at what went on at this time in the Senate? And when they do, do you not think some hard questions and some terrible second-guessing will take place?

I can hear them now. The talk show lines will be clogged, and the blame will be heaped on this body. Why was the Senate so fixated on protecting jobs instead of protecting lives?

The Senate's refusal to grant this President and future Presidents the same power four previous Presidents have had will haunt those who do so, like Marley's ghost haunted Ebenezer Scrooge. They will ask: Why did they put workers' rights above Americans' lives? Why did that 2002 Senate, on the 1-year anniversary of 9/11, with malice and forethought, deliberately weaken the powers of the President in time of war? And then, why did this Senate, in all its vainglory, rear back and deliver the ultimate slap in the face of the President by not even giving him the decency to have an up-or-down vote on his own proposal? This is unworthy of this great body. It is demeaning, ugly, and over the top.

What were they thinking of, they will ask? What could have possessed them? Do not ask then for whom the bell tolls. It will toll for us.

Few leaders have understood the lessons of history as well as Winston Churchill because he was not only a soldier and a politician, but he was also a Nobel Prize-winning historian. Perhaps then at this time we should remember the question Churchill framed to the world when he made that famous

Iron Curtain speech at Fulton, MO, at Westminster College in 1946. He first reminded the audience:

War and tyranny remain the great enemies of mankind.

Then he asked this question:

Do we not understand what war means to the ordinary person? Can you not grasp its horror?

Some of the remarks earlier this morning on this floor reminded me of something else about that speech and its aftermath. Churchill, being so blunt, did not go over very well. The American media and others did not want to hear that kind of talk. They called Winston Churchill a warmonger, and even the usually gutsy Harry Truman denied knowing in advance what was in the speech and even suggested that Churchill should not give it.

The old soldier went on and said some other very sensible and thought-provoking things in that speech, like war used to be squalid and glorious, but now war is only squalid.

I want to repeat that line that is at the heart of what I want to say today: Do we not understand what war means to the ordinary person? Can we not grasp its horror? Has scoring points with some labor boss become more important than the safety of our citizens? Can you not grasp its horror?

I wonder if you would feel the same way if the Golden Gate Bridge was brought down and 95 cars plunged into the San Francisco Bay. Could we then not grasp its horror? Would we then in the name of homeland security still want to take powers away from the President?

Or would you feel the same way if that beautiful little city of New Roads, LA, on the False River, with the Spanish moss dangling on those live oaks, were to go up in a mushroom cloud? Could you then not grasp its horror?

We rev up our emotions so easily to fight superhighways from leveling ethnic neighborhoods. So it would seem to me we should be able to get up the same kind of rage when terrorists want to level entire cities such as Baltimore or Atlanta or the manicured mansions of Newport, RI. If those beautiful cities were the target of a terrorist attack, could you then not grasp its horror? Or the Space Needle in Seattle, filled with tourists, crashing to the ground. Or a smallpox epidemic, in days, wiping out completely the Twin Cities of Minnesota or spreading across the forest plains of South Dakota. From the great Atlantic Ocean to the wide Pacific shore, from the Blue Ridge of Tennessee to Beacon Hill in Massachusetts, I guarantee then the country would grasp that war is horror. And as sure as night follows the day, when catastrophes occur, the Senate, us, we will be held accountable if we fail to give the President the tools to do his job.

Why are people back home always ahead of the politicians? Because most politicians, most at our level, do not get out among them anymore. We

think we do. And some of us do. A town hall meeting here, a senior center there, a focus group or two, but we don't really. We do not talk to real people anymore. We are too busy in that room dialing up dollars. The only horror we can grasp from that experience is some fat cat telling us that he is already maxed out.

Why are we even in this debate? How will it be recorded in years to come when the historians write their accounts of the days of a Senate in September of 2002? How will our actions be judged by the people who go to the polls this year on November 5? Frankly, I think it will be one of our sorriest chapters, certainly the worst time in my short time here, a chapter where special interests so brazenly triumphed national interests.

Herodotus, who lived in Athens in the 4th century B.C., is usually called the father of history. He wrote about the Persian wars, and about the Battle of Marathon, which later historians called the seminal event in the history of freedom. Herodotus wrote that the Persians lost that battle, even though their army was bigger and better equipped, because the Persians committed the sin of hubris; hubris, best defined as outrageous arrogance. If you study the lessons of history, especially the lessons of the history of freedom, you will find that hubris would time and time again bring down many other powerful civilizations.

Hubris, outrageous arrogance, is so prevalent in this debate. The hubris of some labor bosses and their purchased partridges in a pear tree. Outrageous arrogance. What else can you call it when the interests of the few are put above the welfare of the whole country?

For the rest of our lives, we will have to live with what we do on this issue. Will we choose to protect the special interests or will we choose to protect the lives of Americans? Will we hog-tie the hands of our President or give him the same unfettered flexibility other Presidents have had before him? Do not let this be one of those votes you will look back on and ask yourselves for the rest of your lives, what was I thinking? For as we are reminded in the "Rubaiyat" of Omar Khayyam: The moving finger writes, and having writ, moves on. All your piety nor wit shall lure it back to cancel half a line, nor all your tears wash out a word of it.

I ask one last time, do we not understand what war means to the ordinary person? Can we not grasp its horror?

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I yield myself up to 5 minutes from my time.

I will answer the question the Senator from Georgia has raised. Of course we understand what war means to our country and average citizens. That is why our committee has labored so long and so hard to bring forth this bill cre-

ating a Department of Homeland Security, consulting with Members on both sides, working with the White House, to have what is, for the most part, a bipartisan piece of legislation.

Senators have spoken this morning about the Senate being divided on this bill. The fact is, the Senate is not divided on this bill. The Gramm-Miller substitute, by Senator GRAMM's own reckoning, is 95 percent the same as our Senate Governmental Affairs Committee bill. And it ought to be. We have a common ground desire to go ahead and create a Department of Homeland Security.

We have a few areas we disagree on, the most significant of which, the most controversial of which, is the one that the Senator from Georgia has focused on. But I cannot let stand the question that somehow the committee bill, supported by nine Democrats and three Republicans—Senator STEVENS, Senator VOINOVICH, Senator COLLINS—somehow puts the protection of Federal workers ahead of national security. We have a different way we have tried to achieve fairness for Federal workers. We can debate that. There is a compromise achieved by Senator BEN NELSON, Senator CHAFEE, Senator BREAU, that we will have a chance to vote on, the amendment we want to put on to this bill. However, there has been so much misstatement and mythology that has no relationship to reality.

Let me state it clearly, national security always must trump and prevail over any other aspect of law in the cases that are described. Let me be very specific why I say that. I will quote the law, United States Code, Title 5, collective bargaining law, section 7106(a)(2)(A) which says, first:

Nothing in a collective-bargaining law shall effect the authority of any management official of any agency in accordance with applicable laws to assign and direct employees in the agency.

Second, section 7106(a)(2)(B) says:

Collective bargaining shall not effect managers' authority to assign work and determine the personnel by which agency operations shall be conducted.

This is the directly relevant statute section of law which will continue to prevail and expresses the clear desire—I presume the desire of every Member of the Senate—to give maximum authority, latitude, to managers at a time of national emergency; section 7106(a)(2)(D) of the United States Code, Title 5, provides that collective bargaining shall not affect the authority of managers "to take whatever actions may be necessary to carry out the agency mission during emergencies."

In an emergency situation, the agency has statutory authority to act immediately. It does not have to take any time to collectively bargain. The agency actually has authority to act, even if a collective bargaining agreement would ordinarily require some other course of action. All the agency head has to do is to invoke a national emergency.

Therefore, the claims we have heard in the Senate today about how union contracts tie the hands of managers with "silly union work rules" and about how managers cannot order employees to do what is necessary to protect the security of the American people in an emergency are simply not true.

In a Federal agency, there is no such thing as a union work rule that impairs a managers' authority to assign work, to direct employees, or to take whatever action that manager deems necessary in an emergency. That is the law. That is not my opinion; that is United States Code Title 5. When lives are at stake in the kinds of circumstances the Senator from Georgia has described, a Federal manager can impose any changes in assignments immediately, without dealing with unions at all. And the unions get to bargain over ways, if they choose to, to affect the impact of those decisions long after the fact.

So we have some disagreements about the specific wording of civil service protections, management flexibility, collective bargaining rights. But, please, make no mistake about it, in a case of national emergency, the law of the United States, unchanged by the committee's proposal, makes clear that national security prevails over any other section of the law and over any provision of a collective bargaining agreement.

I yield up to 10 minutes to the Senator from Maryland.

Mr. GRAMM. Madam President, are we going back and forth? We do not have to, but we normally have.

Mr. LIEBERMAN. In this case, because I have used very little time, I want to hold it to allow the Senators from Maryland both to have the chance to speak.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Parliamentary inquiry: How much time remains on either side?

The PRESIDING OFFICER. The Senator from Connecticut has 32 minutes. The Senator from Texas has 7 minutes.

Mr. SARBANES. So there are 7 minutes on the other side and 32 minutes left with the Senator from Connecticut?

The PRESIDING OFFICER. The Senator is correct.

Mr. LIEBERMAN. So I yield up to 10 minutes—let's say I yield up to 20 minutes for both Senators from Maryland as they wish to use that time.

Ms. MIKULSKI. I thank the Senator from Connecticut. I know others are anxious to speak.

Madam President, I rise in opposition to the Gramm-Miller amendment. I rise to support the efforts of Senator JOE LIEBERMAN to create a framework for homeland security. I had hoped, when we were working on this legislation, we were not going to be Democrats or Republicans, we were going to be the red, white, and blue party. And

I really deeply regret that this argument has been so deeply politicized.

I am here to stand up to protect America and vote for a Department of Homeland Security. But I also have to stand up for those who are protecting the United States of America, our brave, our gallant Federal employees who are out there every day on the front line wanting to do their job, whether they are Customs workers, in the Coast Guard, the FBI, or the G men at the Department of Treasury, trying to do their job. I resent that my standing up for them, to have their constitutional right to organize, have freedom of assembly, would be called arrogant and hubris.

I listened to an argument that said: Battle? You don't know about it.

You are exactly right. I have never gone into battle. I do not bear the permanent wounds of war like some of our dear colleagues, names such as Dole and INOUE. But I do know this. When we are going to send people into battle, I know we are going to think long and hard about it, because I know what it means. When I stand up for America, I also want to stand up, not for a Department, but for what America believes in.

Why was it OK to have a union in Poland that brought down the whole Communist empire and not to have a union here?

When our firefighters ran up into that burning building at the World Trade Center nobody asked if they were in the union. They didn't look at their clock and wonder if they were working to the rule.

When our emergency workers from Maryland dashed over to be part of the mutual aid at the Pentagon, they were mission driven. They weren't there because they were union members—Oops. I am wrong. They were there because they were union members. They belonged to a union. They belonged to a union called the United States of America. That is the union that they belong to, and that is the union they put first.

Why are we abusing them as if they are the enemy? I hope we will start to be as hard on terrorists as we are on these union members. It has been over 1 year—where is Bin Laden? We haven't found Bin Laden, but we are going to nitpick over whether or not you have a union.

We had an anthrax killer who attacked the Senate and used the post office as a weapon. I have Marylanders dead and I have Marylanders permanently ill because of the anthrax killer. Let's make sure that our workers can go out and do the manhunt they need to do, or to do the money hunt for those who fund them. Let's not worry about whether they belong to a union or they don't. They don't hide behind the union not to do their job. But I tell you, there are those hiding behind a right-wing agenda to get rid of unions in this country or to make unions the problem.

The words "labor boss," what do they mean? It is OK to be a CEO and have more perks than a potentate—that is OK, we can have the imperial CEO. But when people organize, they are called labor bosses, as though somehow or another it is the goon squad? I really resent that. I resent that for my customs workers. I resent it for the postal workers after what happened at Brentwood. The postal workers didn't sit down and go on strike because we failed to protect them. They showed up every day, and because they showed up every day and did their job, as I say, two are dead and many are sick. And we are sick at heart because it happened to them.

So I am kind of tired of this. I am tired of the politicization of the process. I am tired of the cynical manipulation of this process. I feel as though I am being set up. If we stand up for the workers, we are somehow or another slowing down the debate on homeland security.

This national leader, JOE LIEBERMAN, the Senator from Connecticut, has been working on homeland security and an agency to do it long before the White House has. Just like he was calling for a national commission to look at what went wrong on September 11 long before the White House. We have been ahead of the White House, but now we are going to work with the White House.

I think we have to defeat the Gramm-Miller amendment—put that aside and no hard feelings. I think we have to then move on to the Lieberman bill, pass it expeditiously to show the world we can organize and mobilize to protect America, and then let's get on to the other debate related to Iraq. And then let's also get back on another debate, such as what is happened to the economy.

The stock market has plummeted. It is about as bad as it was when Gerald Ford was President, in 1974. We do not want to go there again and then need a Democrat to bail us out—or maybe we will need a Democrat to bail us out, but I don't want to go there. I want to stand up for this country, but I want to stand up for the people who built this country, and it is the trade union movement. If we don't start protecting the protectors, to make sure they have the right equipment, the right training, and also have the right legislative framework where they can have their constitutional rights, then we have other issues.

I want to go back to the bill JOE LIEBERMAN is presenting. I think it is an excellent framework. I will go back to being part of the red, white, and blue party. Let's put the politics of hard feelings behind us, let's get Iraq together, and let's show America we can govern, and let's show the bullies of the world we are going to take them on.

God bless the Federal employees who stand sentry every day to protect America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I rise, first of all, to commend the very able chairman of the committee, the distinguished Senator from Connecticut, for the very fine work he has done on this legislation, particularly on this issue of Federal employees, and the care and sensitivity with which he has struck the balance.

Obviously, on the one hand we have national security concerns. But as the Senator indicated in the quotes he took right from the legislation, the actual words of the legislation, the flexibility that is necessary to deal with national security questions or emergency situations is contained in this legislation. Those would be stripped out by the amendment. The Gramm-Miller proposal would then move the balance. Really, it would eliminate the balance. It would provide no significant or meaningful protections for the Federal employees.

In one sense it raises the question: What is the nature of the society we are trying to protect? What is the nature of the society we are trying to protect? How far are we prepared to go in denying the essential freedoms and essential protections in the name of national security? Not in the reality of national security because the Senator from Connecticut has protected that reality.

Their proposal would give unfettered authority to the Executive in dealing with their employees—the very employees we have to draw upon to protect the Nation and to respond to the challenges we face.

I want to assert in unequivocal terms that, in my judgment, our Federal employees are loyal and committed workers who are dedicated to providing a high level of service. Legislation creating the new Department of Homeland Security should protect the rights of those workers to engage in collective bargaining and to protect their rights under the current civil service system unless critical questions of national security or emergency are presented. And those questions have been dealt with carefully, skillfully, and thoughtfully by the able Senator from Connecticut. I commend him for those efforts.

I don't understand why some are engaged in beating up on the Federal employees. Why is this happening? Have the terrorist strikes driven some to this point? Do they not recall the Federal office building in Oklahoma that was blown up by a terrorist, albeit a domestic terrorist? Do they not recall that, and those dedicated lives that were lost? People all across the country who were working in similar office buildings went back in the next morning to do their job on behalf of the country to serve the public interest—all across America—despite the fact that some of their colleagues had just suffered this grievous blow.

Why do we have this assault taking place? The Federal managers have

much of this flexibility. The legislation has the emergency flexibility in it. The civil service law was originally put in place to protect against politicizing the public service. It has been adjusted and amended over the years.

These arguments that it impedes productivity have been addressed again and again by the chairman's committee. Adjustments have been made in the light of changing circumstances. But no one has ever come before the committee and said we ought to take away all of those protections which have given us a public service with some integrity to it, and which is not subject to political whim.

How are you going to call upon people to serve above and beyond the basic requirements of their job description if you do not treat them with some dignity and respect?

I don't know. Some around here may find that they draw the best out of those who work for them by sort of beating up on them; that if you are sort of whipping them all the time and driving them without any protections, completely at your whim, that enables you to bring out of them the best response. That has never been my experience. I don't know of any labor-management text or treatises by noted experts in the field who say that is the best way to get a stellar performance out of your workers. I haven't seen that treatise yet. In fact, the ones I have looked at say that is exactly the wrong thing to do if you want to draw out a quality and stellar performance from your workers.

There are a lot of very dedicated employees across the country. I think employee rights and the civil service protections which we have are essential to the effective workings of our Government.

Some come and try to portray this as some special interest. The public interest is served by having these arrangements because those arrangements enable us to get better people into the public service, and to draw on them and their full capabilities.

I rise in very strong opposition to the provisions in this amendment that have been offered by Senator GRAMM and Senator MILLER which would strip away from our Federal employees these important collective bargaining rights and these important civil service protections. In my judgment, given the balance which the chairman has already struck on important national security questions, to do what this amendment does—taking away those bargaining rights and those civil service protections—will harm our national security, not help our national security. It will harm our national security.

For that reason, I very strongly oppose the provisions that are contained in this amendment that deal with our committed and dedicated Federal employees.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank my colleagues from Maryland, Senators MIKULSKI and SARBANES, for their very eloquent and passionate and compassionate statements. I appreciate the way Senator SARBANES and Senator MIKULSKI talked about the impulse of the people who are working for the Federal Government.

I cited the law before which talked about the primary status of national security. But the people, the loyal patriotic Americans, does anybody really think in a case of national emergency they are going to be citing subsections of the collective bargaining agreement? They are going to do what any American did. In fact, that is what they did on September 11.

I was in a meeting of a group of Federal employees who happened to be from FEMA. They rushed from where they were to the Pentagon. A whole group of them were flown up to New York. They worked long hours. They got very little sleep for days and days. Obviously, the firefighters in New York are unionized. It is a remarkable story. I don't remember the exact number. I talked to a battalion commander of a unit of New York firefighters a couple of weeks ago. He said on September 11, when they heard about the planes hitting the World Trade Center, several hundred firefighters who were off duty just rushed to the scene to help. They weren't thinking about a collective bargaining agreement. They were thinking about America and their duty. These are public servants in the best meaning of the term.

Mr. SARBANES. Will the Senator yield?

Mr. LIEBERMAN. I would be happy to yield.

Mr. SARBANES. Given this display of dedication on the part of these public employees, why now all of a sudden are we seeking to take away from them these basic rights and protections?

If someone came in and said what a dismal performance we have, and, therefore, we ought to give the management more leeway to sort of beat on these people or something of that sort, I don't know that I would buy that argument. But at least it would be something of an argument.

Instead, you have this exemplary performance, this manifestation of real dedication. And despite that, some now are coming along and, in effect, wanting to beat on people who have behaved in the most extraordinary, dedicated, and selfless fashion.

Mr. LIEBERMAN. The Senator from Maryland is absolutely right. There is no justification for it. At some level, it is not only wrong, it is offensive. And I thank the Senator for his substantial contribution to this debate.

May I ask the Chair how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 12½ minutes.

Mr. LIEBERMAN. Madam President, I am very pleased to see in the Chamber my friend from Hawaii, Senator

AKAKA, a very significant member of our committee, who has contributed substantially, in so many ways, to our legislation that came out of committee. I yield the Senator up to 10 minutes for his statement.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. I thank the Senator from Connecticut.

Madam President, I rise to address the amendment offered by Senators GRAMM and MILLER as it relates to whistleblower protections. Contrary to press accounts, the Gramm-Miller amendment, as well as the House-passed bill and the President's initial bill, do nothing—do nothing—to protect whistleblowers. As Congress debates the creation of the new Department of Homeland Security, we must remember the role that whistleblowers play in protecting this great Nation. We commend the courage of FBI Special Agent Coleen Rowley, who blew the whistle on the serious institutional problems at the FBI which impacted the agency's ability to effectively investigate and prevent terrorism. We commend Federal Border Patrol Agents Mark Hall and Bob Lindemann, who risked their careers by alerting Congress to Border Patrol and INS policies that compromised the security of our borders.

Their actions alerted us to flaws in the current system and allow us to fix such problems in order to have a more secure Nation. Because whistleblowers play such an important role in protecting our country, we must do our part to protect them from retaliation for disclosing Government waste, fraud, and abuse. The Lieberman substitute is the only amendment before us that provides real whistleblower protection.

During the Committee on Governmental Affairs hearings on the creation of the proposed Homeland Security Department, I asked Governor Tom Ridge about whistleblower protections for Federal employees in the Department of Homeland Security. He said that all employees in the new Department would have whistleblower protections because the bill would require the new personnel system to be grounded in the public employment principles of merit and fitness.

However, requiring that a human resources system be grounded in the public employment principles does not equate to whistleblower protection. Congress has worked hard, and continues to work, to provide real whistleblower protection to Federal employees. Claiming that whistleblower protection will be provided based on such principles does nothing to assure Federal employees of their rights and protections or assure Congress that their bipartisan efforts on behalf of whistleblowers would not be frustrated.

Adding to my concern over the lack of protections afforded to employees in the new Department, H.R. 5005 and the amendment offered by Senators GRAMM

and MILLER fail to provide the same level of whistleblower protection that Federal employees have in most Federal agencies. Although the House bill and the Gramm-Miller amendment allegedly maintain whistleblower protections and other merit system principles for employees of the new Department, both allow the Secretary to waive due process procedures and the remedies an employee needs to assert those rights.

The Gramm-Miller amendment bars the Secretary from waiving the applicability of several chapters of title 5 covering a variety of civil service issues. The list of nonwaivable chapters conspicuously fails to include protections against unwarranted disciplinary actions and performance appraisals, access to third party investigations by the Office of Special Counsel, or independent hearings at the Merit Systems Protection Board. Those agencies provide vital third party review and transparent enforcement for whistleblower and other merit system rights.

When Federal employees allege that they have been subject to a prohibited personnel practice, including violations of the Whistleblower Protection Act, OSC has authority to receive and investigate such allegations. If the special counsel finds reasonable grounds to believe that a violation has occurred and corrective action is required, she must report the determination to the MSPB, the affected agency, and the Office of Personnel Management, OPM. If the agency fails to act to correct the prohibited personnel practice, the special counsel may petition the MSPB for corrective action.

Since these procedures are not specifically included in H.R. 5005, it is doubtful that the protections afforded to other employees are available to Homeland Security employees.

In 1995, Congress gave wide latitude to the Federal Aviation Administration to create its own personnel system. Although this system was to afford whistleblower protections, the Justice Department found that Congress incorporated only selected provisions of title 5 into the FAA personnel management system, thus leaving OSC without authority to investigate or otherwise pursue cases of whistleblower retaliation alleged by FAA employees.

The reasoning of the Justice Department is supported by Supreme Court precedent, which states that:

[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied.

Moreover, Congress has repeatedly demonstrated that if its intention is to exempt certain entities generally from title 5, but to apply the substantive whistleblower protections and all the ancillary enforcement procedures, it knows how to do so unambiguously. For example, when Congress applied only selected provisions of title 5 to the Panama Canal Commission, it provided for application of the whistleblower protection provisions as follows:

Section 2302(b)(8) (relating to whistleblower protection) and all provisions of Title 5 relating to the administration or enforcement or any other aspect thereof, as identified in regulations prescribed by the Commission in consultation with the Office of Personnel Management.

It is fair to conclude that whistleblowers in the new Department do not have the same protections as other employees in the Federal Government due to the absence of any similar reference to the whistleblower protection enforcement provisions of title 5 in the House bill or in the Gramm-Miller amendment.

The Lieberman substitute, however, maintains all of the title 5 protections for whistleblowers to ensure that they have the needed protection to come forward and alert us to serious problems in the Federal Government that can hamper our efforts to secure our homeland. It also ensures the continuation of union representation which allows third party arbitration for whistleblowers. The Lieberman substitute also contains two provisions, sponsored by myself and Senator LEVIN, which enhance the protections afforded to Federal employees.

The Akaka-Levin provisions grandfather the whistleblower rights of employees transferred into the new Department and provide full whistleblower protections for TSA baggage screeners. Whistleblower protections for TSA employees had unanimous bipartisan support from the Governmental Affairs Committee and the provision mirrors the language of S. 2686 which was introduced by Senator GRASSLEY. Despite such widespread support, the Gramm-Miller "compromise" amendment does not include this bipartisan protection for whistleblowers.

Under the terms of the Aviation and Transportation Security Act that we passed last year, the Under Secretary of Transportation for Security has the authority to employ, terminate, and fix the conditions of employment for the Federal screening workforce while the rest of the employees of the Transportation Security Agency are governed by the personnel system established by the Federal Aviation Administration.

While the FAA personnel system now provides full whistleblower protection to employees, TSA security screeners are denied such protection. In May, TSA and OSC reached an agreement to provide limited whistleblower protection to TSA baggage screeners. Under this nonstatutory agreement, security screeners were not afforded appeal rights. However, the right to appeal to an independent third party is a necessary part of providing real whistleblower protection. Such protection is necessary to ensure that screeners feel secure in coming forward with information of government waste, fraud, and actions that are dangerous to public health and safety.

Recognizing the need for full whistleblower rights, Congress resolved to provide OSC enforcement authority and

full whistleblower rights to FAA employees in 2000.

I urge my colleagues to once again protect our Federal whistleblowers by providing full and explicit whistleblower protection to employees in the Department of Homeland Security. I urge my colleagues to oppose the Gramm-Miller amendment and support the Lieberman substitute.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, could the Chair indicate how much time is remaining on each side?

The PRESIDING OFFICER. One minute to the Senator from Connecticut, and 7 minutes to the Senator from Texas.

Mr. LIEBERMAN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Madam President, let me conclude in the moment I have remaining. I have the feeling this will not be the last moment I or other Members will have to discuss the Graham-Miller substitute or the question of protections for Federal workers.

There is a significant disagreement about the protections for homeland security workers. I do think, as we talk about the Nelson-Chafee-Breaux compromise, which I support, that it will be seen that it not only gives some protection to Federal workers, particularly those who are currently unionized and will be transferred to the new building, but it leaves the President with the last word on matters of national security. Let not the debate on that matter obscure the fact that, as Senator GRAMM himself has said, 95 percent of his substitute is the same as our committee bill. So let's settle the small point of disagreement and get the rest that we agree on done.

I believe my time has expired.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

The Senator from Nevada.

Mr. REID. Madam President, I have a unanimous consent request which I have informed the minority I am going to propound at this time. Senator NELSON has been designated as Senator DASCHLE's designee. I ask unanimous consent that following my unanimous consent request—and I understand there will be an objection—Senator

NELSON be recognized to offer an amendment.

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

UNANIMOUS CONSENT REQUEST—
S. 1140

Mr. REID. Madam President, I ask unanimous consent, on behalf of Senator DASCHLE, that the Senate proceed to the immediate consideration of Calendar No. 210, S. 1140, the motor vehicle franchise contracts bill; that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. Madam President, I have no objection to this request, but I understand there is a Senator on this side who wants to review it further, and on his behalf I object at this time.

The PRESIDING OFFICER. Objection is heard.

HOMELAND SECURITY ACT OF
2002—Continued

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

AMENDMENT NO. 4740 TO AMENDMENT NO. 4738
(Purpose: To modify certain personnel provisions, and for other purposes)

Mr. NELSON of Nebraska. Madam President, I call up my amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. NELSON], for himself, Mr. CHAFEE, and Mr. BREAUX, proposes an amendment numbered 4740 to amendment No. 4738.

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

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

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

Mr. NELSON of Nebraska. Madam President, I am pleased to join with my friends, Senator JOHN BREAUX of Louisiana and Senator LINCOLN CHAFEE of Rhode Island, in helping break the stalemate on the labor-management issues that have held up the homeland security legislation. We need to move forward and pass a bill that provides real security for all Americans without the distractions of labor-management issues.

This legislation is a huge undertaking, and the reorganization will certainly not be accomplished overnight.

That being said, we need to get to it right now because the later we come back to try to do this, the more difficult it will be. We need to do it right

because unscrambling the eggs is impossible.

The new Department will not begin well if it begins with a staff who feels their concerns have been ignored. We now have the opportunity to break that logjam. This compromise addresses the concerns of both sides. The agreement preserves the Presidential authority to exempt union employees from collective bargaining as employees of the Department of Homeland Security. It also grants the President historic personnel flexibility, giving him the authority to hire, fire, promote, demote, and to rewrite civil service laws in the area of performance appraisals, classifications, pay rates and systems, and adverse action.

The agreement provides binding arbitration on personnel flexibility. All sides will have a seat at the table during the development of the new personnel rules and any disagreements over the rules will be referred to the Federal Service Impasse Panel, which will have the authority to set the rules and resolve disputes. This is modeled after the IRS Restructuring and Reform Act of 1998, which is current law.

The Federal Service Impasse Panel has discretion to impose new rules to break this agreement. This is existing law. It is the way in which we ought to proceed.

I know this amendment will receive broad bipartisan support, and I hope those of us who seek to complete action on this important legislation will support this effort to clear one of the major hurdles that has been currently blocking our progress so we can move forward on this important and vital security matter currently before us.

I ask for the support of my colleagues, and I hope we will move forward on this as soon as we possibly can. There is no reason to delay this legislation any longer.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Madam President, I support the amendment to the Gramm-Miller amendment which has been offered by our good friend and colleague Senator NELSON, and by my colleague Senator LINCOLN CHAFEE. It is very clear the Senate, as we debate homeland security, has reached a point where we are at a logjam. I, for one, and I think the vast majority of our colleagues, strongly support the creation of a Homeland Security Department, and why is very simple.

In light of today's terrorist threat to this country, we can no longer continue to operate and protect our Nation's security in the way we always have. In the past, too often the right hand did not know what the left hand was doing, and vice versa. It is clear, from the evidence that has now been presented, we have agencies within our own Government that had certain amounts of information that was important information, but information they did not adequately share with other Departments and agencies within our Government.