

having been Secretary of the Navy, or maybe it is simply because he just has the big picture. I thank him for his leadership on this issue.

I assure him, if there is any way we can work out an agreement on a bipartisan basis to find a solution, I want to do that.

There is one constraint: We cannot give the President a law that won't get the job done. If he says he needs a pickup truck, we can't give him this beautiful, shiny pickup truck with no steering wheel.

I look forward to working with the Senator. I appreciate his leadership and, quite frankly, his courage on this issue.

Mr. WARNER. Mr. President, I thank my colleague for his very thoughtful remarks. If I may say, in conversations in the presence of the President of the United States on this subject and the importance of homeland security—and I have attended several meetings along with other colleagues—this matter has been raised. I detect in the President no concern that Government employees are secondhand citizens, but they are entitled to their rights.

That is the purpose of this legislative body, to bridge the gaps to the extent we can and protect all the people.

I thank my colleague and yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. EDWARDS). Morning business is closed.

#### 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 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.

Gramm/Miller amendment No. 4738 (to amendment No. 4471), of a perfecting nature, to prevent terrorist attacks within the United States.

Nelson (NE.) amendment No. 4740 (to amendment No. 4738), to modify certain personnel provisions.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that at 3:45 p.m. today the motion to proceed to the motion to reconsider be agreed to, the motion to reconsider be agreed to, and without further intervening action or debate, the Senate proceed to vote on a motion to invoke cloture on the Lieberman substitute amendment, for H.R. 5005, the Homeland Security legislation.

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

Mr. REID. Mr. President, we are in a parliamentary posture where we will

have a vote tomorrow at such time as may be determined, either that or an hour after we come in. The majority leader has said privately and has authorized me to say publicly that we would be willing to have that vote today, the reason being, of course, we have been told by the minority that we are not going to get cloture. It is hard to comprehend that, but that is what they said. It would seem to me it would be in everyone's best interest to see if that, in fact, is the case today, if, in fact, we did get cloture, and the 30 hours could run and it would not interfere with the duties of the other Senators, except those who wish to speak. Postcloture, a Senator has up to 1 hour.

There are lots of things going on at home. This is election time, as we know. It appears to me, as I said earlier today, we have had so many code words. This is a filibuster. We were told yesterday there were 30 speakers on this amendment. Realistically, what amendment ever had 30 speakers? There won't be 30 speakers on this amendment, but there will be a lot of people moving around, stalling for time, which has happened now for 4 weeks on this bill.

I said yesterday, and I am beginning to believe more all the time, and it appears clear to me, that there does not seem to be any intention of either the White House or the Republican majority in the House or the minority in the Senate, of wanting to move this bill forward.

There is general agreement that the bill the Senators from Connecticut and Tennessee came up with is a bill we should have passed very quickly. There are problems that could have been resolved in the House and the Senate conference. For every day we spend talking about Iraq—and I think we should spend some time every day talking about Iraq and homeland security—it is 1 day we do not have to deal with the stumbling, staggering, faltering economy.

If we spend each day on issues focusing away from the economy and what needs to be done in the Senate, including doing something about terrorism insurance, doing something about a Patients' Bill of Rights, which the Presiding Officer worked very hard on—we need to do something on a generic drug bill. There was the fiasco that took place in Florida. Again, 2 years after the fiasco of all time with the elections, still nothing can be done because the House will not let us do anything. The energy conference is moving forward by tiny steps, but it is one of the few things happening.

It is obvious to me there is an effort to do everything that can be done so we do not focus on the economy. It is too bad. We can either formally come in later and offer the vote on the cloture motion set for tomorrow or do it today. But the offer is there.

For all the Senators worried about what is going to happen tomorrow,

they should understand—and I understand there are some on the other side who do not even care if they are here or not because they really do not need them on a vote because we have to try to get 60 votes. But that is OK; we will still do everything we can. On this side we are going to move forward on this bill. We will, as the leader indicated, work weekends, we will work nights, whatever it takes, to try to move forward on this bill. I am disappointed we are being told there will not be cloture on this until tomorrow.

That is, I repeat, only an effort to stall moving forward on this legislation.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I will respond to the distinguished Democratic floor leader by simply going back and reviewing the facts and setting out the obvious blueprint that will solve our problems. I remind my colleagues we have been on this bill for over 4 weeks largely because of the debate on the Byrd amendment, and not a minute of that time was wasted because we were convinced by the major premise of the Byrd amendment. In the Gramm-Miller substitute we deal with that problem by maintaining the power of the purse, which is the fundamental constitutional power of the Congress.

I am not complaining about the fact that we have spent the bulk of our time on an amendment that is still pending because the plain truth is we learned something "we" being Senator MILLER and I. We learned something. We concluded that Senator BYRD was right on and we changed our substitute. By the way, we have never voted on the Byrd amendment.

The plain truth is the great bulk of the time we have been on this bill we have been debating that amendment, and it is yet to be resolved.

I remind my colleagues that Senator THOMPSON, the ranking Republican on the committee, offered a simple amendment that said we ought not tell the President how to set up the White House. This amendment was partly controversial in terms of the President's National Security Adviser and his terrorism adviser. That amendment was, sure enough, adopted. But only after 6 days of delay on the part of our Democrat colleagues. And then there were other delays before it was ever added to the bill.

The problem is, they have delayed this bill, and not us. Everybody is entitled to their own opinion. They are just not entitled to their own facts. The weakness our colleagues on the other side of this issue have is that the facts are against them. What is the old deal in law? When the facts are against you, argue the law.

What is the current holdup? The President of the United States, working with a Democrat and a Republican, has spent 4 weeks listening to things that have been said and concerns that have been raised, starting with Senator

BYRD. We have made 25 major changes in the President's proposal. In terms of the President's personnel flexibility, we have limited his power to eliminate exactly the concerns that have been raised by every opponent of the President who has spoken out on this issue.

Does the fact that we have eliminated the ability to discriminate while preserving basic workers' rights in terms of being judged on merit change the rhetoric of the debate? No. When people are debating, they still act as if the President could be arbitrary or capricious. But the point is he cannot be under our bipartisan substitute that the President supports.

We are at war. We were attacked on September 11. Thousands of our people were killed. The President has asked us to bring together 170,000 people in the Federal Government to help him prosecute this war and protect American lives.

After listening to many concerns, changing the President's proposal, and adopting 95 percent of the Lieberman proposal Senator LIEBERMAN says: You have taken 95 percent of my bill. What is wrong with it, if you are for 95 percent of it?

It is like a nice, shiny, fancy red truck—I remember our ranking member drove one in the campaign—still legendary—but it is only missing a steering wheel. What Senator MILLER and I have done, working with some 45 of our colleagues, is we have taken that truck and we have put a steering wheel in it.

In wartime, with American lives at risk, the President of the United States, asks only one thing: Give him a vote on his homeland security bill. Some people may view that as an extraordinarily extreme request. But I submit that there is not a State in the Union, whether it is Connecticut or Nebraska, Tennessee, New Jersey, or North Carolina, where you could go into any coffee bar in any drugstore or restaurant, and sit down and gather a group of people around and ask them the following question: When the President has asked for powers to defend American lives during wartime, should we give him these powers that he says that he needs? My guess is you would have a hard time finding somebody in Nebraska who would say no.

All we are asking is something very different. We would like him to be given the tools to do the job. We are simply asking that we have a vote on his proposal.

Our Democrat colleagues say: No, we are not going to give you an up-or-down vote on the President's proposal. We are going to make you vote on it the way we want to write it, before we let you vote on it the way the President wants it. Under the rules of the Senate, they can do that. Under the rules of the Senate, if they have the votes, they can do whatever they want to do. The Democrats have the right to deny the President an up-or-down vote. They have the right to do it under the

Senate rules. We know at this very moment that terrorists are plotting the murder of our citizens, we know this and worry about it every day. Under these extraordinary circumstances, the question is not what they have a right to do, but rather it is what is right to do.

Let me say this. We have this little gimmick going on. It is too cute by half. The gimmick is that by using the parliamentary procedure of cloture, they are going to put the President's proposal into a straitjacket where they get to change it before it is voted on.

Look, I have used parliamentary procedure myself. Every Member has a right to do it. But do you think the American people are stupid? Do you think the American people are not going to figure out what the game is here? Do you think the American people are not going to get it straight, that not only are you not with the man and do not support the President's request for the tools he wants, but you won't even give him a vote on the tools? You have the power to do it under the rules of the Senate, but you have to have the votes, and you don't have the votes. So we are going to play this game.

I hope everybody is watching this—I hope a lot of people are watching it. I can tell you one thing. I used to think, before I got old, that I had reasonable political abilities. But I could not defend the position of the opposition. There is no city in my State that I could go into and take the position of the opponents of the President and walk out of there with my hat, much less with my head.

The bottom line is we are going to go through a little parliamentary gimmick tomorrow where we are going to vote on cloture to try to put the President into a parliamentary straitjacket where he never gets a vote on his proposal. But there is a problem. It takes 60 votes to get cloture, and our Democrat colleagues do not have 60 votes, and they are not going to get 60 votes.

So, rather than playing all these games while American lives are in jeopardy, the obvious thing to do is to give us a vote. I would be happy to propound a unanimous consent request to have a vote at 11 o'clock on Tuesday, up or down, on the President's proposal. We want a vote on the President's proposal. Look, I know people back home. They are trying to pay the bills. They are trying to figure out how to get Sarah off to school. They are not quite paying attention. But I do not think they are going to believe that the President does not want his own proposal to be voted on. Again, they may be confused. They are not paying attention. They are busy. They are counting on us to do the right thing. But they are not stupid.

The way to solve this thing and get on with this bill is to do something you are going to end up doing anyway, and that is, give the President a vote.

Let me reiterate that no one has proposed a compromise that I have not set

down and talked to him about. It continues to dumbfound me that we have had an issue of life and death for American citizens become a partisan issue. I think every person in the Chamber who has been involved in this debate will have to grudgingly say that this is true.

Now before somebody comes out here and starts screaming let me tell you what partisan issue is. It is an issue where you draw the line right down the middle of the Senate and almost everybody on the left side of the Senate is on one side and almost everybody on the right side of the Senate is on the other side. That is how we define issues becoming partisan.

How did it ever happen, when you saw the way we all felt after 9/11?

Let me tell you how it happened. It happened because it is not easy to provide for homeland security. The vote on Iraq is an easy vote because, so far as I know, there is no organized, active political constituency for Saddam Hussein. He doesn't have an organized political group in America that is actively lobbying on his behalf, of which I am aware.

There are some people who believe we ought to turn over American security to the U.N. I understand that view. I reject it. When the lives of my people are at stake, it is my responsibility and it is the responsibility of our Government. It is not the responsibility of our allies, not the responsibility of the U.N. I am not willing to delegate it to anybody else. But I respect differences of opinion.

But that is an easy issue compared to this issue. The reason it is an easy issue compared to this issue is that you cannot promote homeland security without having to make tradeoffs.

That is why we are here. We all want to protect Americans. I would never say—and I don't believe that my Democrat colleagues are—we are not concerned about national security. The problem concerns that it is not free. The problem concerns that there are tradeoffs. And the tradeoff is, if we are going to give the President the power to hire the right person, put them in the right place, and at the right time, if we are going to allow the President to have the tools to fight an enemy that did show up anywhere and could kill thousands of our people, we have to be willing to change the way we do business in a Federal bureaucracy.

The Federal bureaucracy does not want to change the way we do business. Unlike Iraq, this is an issue where there are strong political forces that are against giving the President this power because they do not want to change the way they run their business.

Look, I am not going to stand up here and state that the position that the rights of public employees is morally inferior to the position that lives are more important than "workers' rights." I believe it is a law of order. But that is a moral judgment somebody else has to make.

All I am saying is the reason this has become such a contentious issue is that we have one of the most powerful political forces in America—the public employee labor unions and the Federal bureaucracy—and to have an effective homeland security system, you cannot have the horse-and-buggy civil service that we have today.

Interestingly enough, there are only 20,000 members of the union who would be among the 170,000 people who will be brought together in this agency. And only 20,000 of them are members of unions. Yet, remarkably, we have an amendment pending that would give unions that represent 20,000 workers veto power over the President's decision with regard to 170,000 workers.

I don't think that would make a whole lot of sense where I am from, and I don't think it makes sense where you are from. But that is why we have a battle.

Let me also say that I think part of our problem was, when this bill was written in committee, and when it was being debated early on, nobody was paying much attention to it except organized special interests in Washington, DC. As a result, this was written as sort of a business-as-usual bill. But business is not usual. When workers' rights interfere with people's right to their life and their freedom, then I think there has to be some flexibility.

I am going to talk more in a moment about the bill. Maybe I should let other people talk before I do. But let me just sum up by saying we have been on this bill for over 4 weeks because the opponents of the bill have taken that tack. We have been on this bill for 4 weeks because it took 6 days to get a vote on the amendment offered by Senator THOMPSON, and even then it was 3 more days before it was added to the bill.

All we want is to have a vote on the President's proposal. We are going to get it. We can go through all kinds of games. We can fill up the tree, as they say. We can use parliamentary procedure. We can try to get cloture and put the President in a box. But the American people are not going to be deceived because they are not stupid. In the end, they want the President to have the tools he needs. But they are never, ever going to accept not even giving him a vote.

Maybe you can justify this. Maybe this makes sense where you are from. But there are a lot of things at night when I get down to say my prayers for which I thank God. One of them is, I don't have to defend a position of the people on the other side of this issue, because I am totally incapable of doing it. I don't think it is defensible.

I want to urge them once again, let us work out a compromise.

I am going to in a moment—this is the last point I will make because others are getting ready to speak—outline why this amendment by Senator NELSON is anything but a compromise. I am going to outline for only a moment how this totally destroys the ability of

the President to get the job done. I think most people, when they listen to that, and who are objecting, will understand what the issue is about.

But I have given the Senator in writing the changes he would have to make for the President to be able to accept it. In the previous offer that was brought forward, we gave one simple change—preserving the supremacy of the President on national security. Every President since Jimmy Carter has had the ability in the name of national security to make personnel changes. But, remarkably, the Senator's amendment and the underlying bill take away from President Bush powers that he had the day before the terrorist attacks.

How many Americans would be absolutely stunned to know that in the name of homeland security we are debating a bill that takes away power from the President to use national security powers?

Somewhere, somehow, somebody's priorities have gotten way off base. Either the President and those of us who support him are completely lost in terms of any weighting of the reality of the world we are in, or the people who oppose the President have gotten badly off base and out of tune with the reality we face.

Obviously, I don't make the judgment about which side is lost in the wilderness. But I would have to say I believe the American people are going to reach the conclusion that the President is right and reasonable and the people who oppose him are wrong and unreasonable.

There is a way out of this mess. But the President can't do it alone.

I urge my colleagues to end this charade, reach an agreement, and let us have a bipartisan bill. And, if you are not willing to do that, you are going to have to give the President an up-or-down vote. There is no other way you are going to be able to do it without it. We can go through the process. We can vote on cloture tomorrow. We are not going to get cloture. We can do it next week. But in the end, the President is going to get a vote. But what the President wants is not a vote but a compromise with one constraint—the President has only got one constraint: Give me something that can work. Give me the tools to finish the job. But don't give me tools that won't work. He has a little bit harder time than his opponents because their proposals don't have to work. His proposals do.

That is my plea.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, after the exchanges that were heard on the floor yesterday, I must say I hope we can come back to this debate on homeland security and focus more directly on all the common ground we have with a spirit of compromise and clearheaded perceptions that can bring us together so we can get this done.

I find the comments of the Senator from Texas, who is about to leave the floor, so full of misunderstandings or misperceptions and so full of inflexibility that I must respond to them.

The Senator talks about delay.

Let me just recite some history on this bill. It was in October of last year—almost a year ago—that Senator ARLEN SPECTER, our distinguished Republican colleague from Pennsylvania, and I introduced a bill, a piece of legislation, to create a Department of Homeland Security. That measure came from work our committee had done.

But these special interests that Mr. GRAMM, the Senator from Texas, invokes, throws around, they were not involved in the construction of that legislation. That legislation came from public hearings we had, and primarily and largely from a nonpartisan citizens commission created according to legislation sponsored by the former Speaker of the House, Newt Gingrich, chaired by two distinguished former Senators, Republican Warren Rudman of New Hampshire and Democrat Gary Hart of Colorado, who suggested a Department of Homeland Security.

That was October. Talk about delay. The President of the United States took the position then that the executive office he had created with Governor Ridge could handle the urgent and enormous new responsibility post-September 11 of homeland security. We respectfully disagreed.

I must say, just to harken back to the debate of yesterday, that was a disagreement on substance. I never would have thought to suggest that the President of the United States was putting the bureaucratic opposition to the new Department of Homeland Security ahead of the national security interests of the United States, which was suggested earlier this week by the President himself in referring to this marginal dispute—significant but marginal dispute—that we are having over how best or whether to protect the rights of homeland security workers.

So that was October, November, December, January, February, March, April, May. In May, the Senate Governmental Affairs Committee reported out a bill, based on the one Senator SPECTER and I put in, on a 9-to-7 vote, creating a Department of Homeland Security.

President Bush and most of my Republican colleagues—the seven Republicans on the committee who voted on that—were opposed to the Department at that point.

Because we are talking about delay, the truth is, if we had all gotten together last fall, this Department would be up and protecting us today. But we had a difference of opinion about it.

On June 6, President Bush announced that he endorsed the idea of a Department of Homeland Security. That was the turning point that led us to what I thought was the inevitability that we

would create such a Department because of the urgent need to do so post-September 11, 2001.

We worked together on a bipartisan basis with the White House. We accepted some of the changes that the White House had in our legislation. We worked with colleagues on the committee and outside—Republican and Democrat—to improve our bill.

At the end of July, after 2 days in markup, the committee reported out the bill. I said at that point that 90 percent of our committee bill was in concert, was in agreement, with what President Bush had in his bill—90 percent.

Senator GRAMM, after his considerable work on the Gramm-Miller substitute, said that—he raised me 5—95 percent of his substitute was the same as our bill.

So can't we agree on that 5 or 10 percent on which we have disagreement? Can't we come together in the interests of the urgent national need for homeland security?

No one is delaying on this side. Right now, the reality is that the Senator from Texas is leading an effective filibuster against moving ahead on this bill. And why? Because we have achieved a compromise on the major outstanding point of division, which is, how do you protect the rights of homeland security workers? It is a bipartisan compromise because one Senator, the courageous Senator from Rhode Island, has decided that he is going to find common ground in the interest of preserving the national security authority of the President while giving a little bit of due process to Federal workers. That is all this does.

I think there may be some others of our colleagues on the Republican side who would support this compromise because it is reasonable and it meets the test that the White House set up that they did not want any diminution of the President's authority. Under this compromise, there is none. Senator NELSON of Nebraska will speak about this in a moment. He is an architect of this proposal.

So the fact is, my friend from Texas does not have the votes. We have at least 51 on our side. And for that reason, he is not going to let us go ahead and vote. He asks that there be an up-or-down vote on the President's proposal, but what he is asking for is something that is pretty much unheard of around here: Don't allow any amendments.

The President is a good man. The Senator from Texas is a good man. But they are not infallible. None of us is infallible. The Senate has a right to amend. In fact, we are asking here for one amendment.

I wish the Senator from Texas were on the floor because I would ask him, wasn't he aware that the President's proposal in the House—the Republican-controlled House—didn't get voted on without amendment? There were amendments offered. They improved it.

The Gramm-Miller substitute changes the proposal the President initially made because that is the way this process works.

So if there is any inflexibility here, I say, respectfully, it is on the side of the Senator from Texas and those who stand with him. We are so close to having a reasonable compromise and a good bill to create a Department of Homeland Security. And he is right; the terrorists are out there. They are planning right now to do us damage. And we remain dangerously disorganized in the Federal Government.

One of the things our bill will do is to plug the gaps, close the inconsistencies, break down the walls that the investigation of the Joint Intelligence Committee has shown us contributed, I believe measurably, to the vulnerability that the terrorists took advantage of in September of 2001—September 11.

So I am sorry we are back to this futile, foolish debate. This is a good compromise, the Nelson-Chafee-Breaux compromise. Senator NELSON will speak to it in more detail in a moment. We agree on 90 to 95 percent of the underlying bill. We have the same departments. Let's get this done and stop this inflexibility.

Mr. President, as a show of good will, I want to offer here on the floor now what we informally offered to the Senator from Texas yesterday off the floor. He asks for something that usually does not happen around here, which is an up-or-down vote in the sense of without the right to amend.

But just to show how anxious we are to move forward, Mr. President, I ask unanimous consent that immediately upon the disposition of Senator NELSON's amendment, Senator GRAMM be recognized to offer a further second-degree amendment, which is the text of the President's proposal as contained in amendment No. 4738, and that the Senate then vote immediately on his amendment.

The PRESIDING OFFICER (Mr. JOHNSON). Is there objection?

Mr. THOMPSON. Mr. President, reserving the right to object, I have not had an opportunity to either consider the suggested unanimous consent request or to talk to my other colleagues, some of whom are not on the floor, who are directly involved in these negotiations. So for that reason, at this time, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LIEBERMAN. Mr. President, that offer remains pending. I hope Senator GRAMM will consider it. It says that the Nelson-Chafee-Breaux amendment, compromise, would be voted on first, and then we give Senator GRAMM the opportunity to have the President's proposal voted on.

Now, is he worried that that means he might not have the votes for the President's proposal without the Nelson-Chafee-Breaux amendment on it?

I ask him to consider that because it would both give him what he asks for

and it would allow the Senate to move forward and complete our business, pass this legislation, get it to conference with the House, and create a Department of Homeland Security to protect the American people.

There has been too much nonsense in this debate, too much irrelevancy, and not enough appreciation in this hour of urgent vulnerability for our country about how critically important it is for us not to do business as usual but to rise above the normal nonsense and do what we are supposed to do on foreign and defense policy, which is to forget our party labels, to leave our ideological rigidity at the door, and come here and reason together in the interest of the beloved country we are privileged to serve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I appreciate the opportunity to be here today and speak in favor of the amendment which, together with Senators CHAFEE and BREAUX, I have submitted for consideration to the homeland security debate.

I wish my good friend and colleague from Texas was in the Chamber because I have hunted with him. He is an excellent hunter. He is a great sharpshooter. Today his shots miss the target. The truth is, he is right on one point: The people of America are smart. They are smart enough to know that you are not entitled to your own set of facts, but it is pretty easy for somebody to mischaracterize or restate the facts in a way that will make their case.

That is what happened on the floor this morning. If you want to attack an amendment, then refer to those who support the amendment as opponents of the President. Everybody knows Senator CHAFEE, Senator BREAUX, and I are not opponents of the President. This is an area where I thought we had agreement with the White House.

Let me characterize the facts not as I see them but as they have been stated by others. I refer, first, to the letter from Governor Ridge, dated September 5, to Senator LIEBERMAN. I quote:

The President seeks for this new department the same prerogatives that Congress has provided other departments and agencies throughout the executive branch.

Then there are several examples set forth as bullets. The third bullet point reads:

Personnel flexibility as currently enjoyed by the Federal Aviation Administration.

He also adds the Internal Revenue Service and the Transportation Security Administration.

This proposal adopts the language of the Internal Revenue Service in connection with the reorganization of that Department. I thought we were in the position to offer exactly what was being requested. I am a little bit confused about this because I happened to be presiding the day my good friend from Texas appeared on the floor and

said, with regard to providing Presidential authority: We have done the same thing in the past with the Federal Aviation Administration. But interestingly enough, in one area we have granted a tremendous amount of flexibility, when we decided to reform the Internal Revenue Service. We gave the executive branch of Government tremendous flexibility in hiring, firing, pay, and promotion because we were so concerned about the inefficiency and the potential corruption in the Internal Revenue Service.

He went on to ask his colleagues, if we believed it worked there, then why do we not believe it can work here?

That is exactly what we have offered. Now we find that is not acceptable.

I have already referred to the concern I have; that is, when the goalposts are moved and the rules change in the middle of the game or the circumstances around you continue to be in flux, how in the world can you ever meet the expectations of the other side?

What my colleagues and I have tried to do is offer a compromise that will bridge the gap to bring together that last 5 percent Senator LIEBERMAN and Senator GRAMM referred to, to close the gap, fill the last 5 percent, end the debate, and do what we need to do—vote to pass a homeland security bill so it can go to conference and we can have national security.

It has been suggested that perhaps we are not as interested in national security as we are in other interests. National security is not only the primary interest, it is the driving force behind the homeland security bill. It has been suggested that there is another interest, as though that is going to take away from national security.

That is not going to take away from national security because this amendment provides enough support for the President's powers, the President's authority to do what the President needs to do. It is consistent with what Governor Ridge has suggested, and it is consistent with what our good friend and colleague from Texas asked for on the floor of the Senate over a week ago.

Characterization is important. But the important thing the American people understand is that on the floor of the Senate sometimes losing becomes winning. While the same set of facts are stated there, they can be characterized in different ways. You have seen a characterization today that is different than what the facts truly are.

It is hard to find another interpretation from what my good friend, the Senator from Texas, has said on the floor of the Senate or what Governor Ridge has written very clearly in his letter.

It seems to me we can, in fact, close the gap, stop the debate, and move forward and pass this legislation.

Senator LIEBERMAN made a good point: In the Congress of the United States, it is rare that a bill that is in-

troduced in one form is in that same form by the time it has completed its process. There are amendments. There are amendments because there are different ideas in which we try to approach these very important issues, to find legislation that will solve the problems we face.

This bill is different now than it was at the very beginning. I can tell you today that, if we can accept this amendment, we can, in fact, close the gap.

I have met with Senator GRAMM. He is absolutely right. He has always offered to meet to discuss this or any other issue to see if we can close the gap. We are continuing to have discussions. I hope we are able to close the gap. But if the conditions change, it is very difficult to close the gap.

I hope we will be able to move beyond what appear to be partisan remarks this morning to what will be American remarks about how we can find a solution—not to characterize it as Republican or Democrat, but to characterize it as an American solution to an American problem facing the American people. And it is the American way to debate, compromise, and ultimately come up with a solution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I would like to directly respond to the Senator from Nebraska. As I understand his point, it is that his compromise, which is looked upon as the bipartisan compromise because a Republican has joined in it—what Senator GRAMM's efforts have done, along with Senator MILLER, apparently is not looked upon as a bipartisan compromise, even though a Democrat has joined in that; that is just a matter of terminology—the Nelson compromise purports to give the President flexibility because it gives the President flexibility that the IRS has.

He is absolutely right. The IRS has been mentioned in conjunction with this debate as one of those agencies where we have given the President flexibility.

What the Senator fails to point out is that also a part of that debate has been the discussion of other agencies where we have given the President much more flexibility than we have given the IRS.

The flexibility we gave the IRS was hotly contested and hotly debated, but the IRS had so many problems. They had spent billions of dollars trying to get their computers to talk to each other. We had hearings about their problems. This is one agency now. This is just one organization. Because of all the difficulties they had, we decided to give them flexibility with regard to pay, hiring, and some other items. But as a part of that, there was a procedure that required negotiation with the employees union. It required, I believe, a written agreement, and it required, if an agreement was not reached, it had

to go before the Federal Services Impasses Panel.

The Senator adopted those provisions and put it in the compromise and said: OK, we have given you what the IRS has.

The only problem with that is we have given flexibility to the FAA, we have given flexibility to the Transportation Security Agency, we have given flexibility to the GAO, none of which require the head of those agencies to go before the Federal Services Impasses Panel.

It is only with regard to the IRS and a hotly contested compromise that we placed that burden on the leadership of IRS. In these other agencies where we gave additional flexibility, we did not put the impasses panel as a part of that. So our friends on the other side find one area where the people running the Department have to go through additional hurdles to interject any flexibility, and they adopt that one instead of the example we have given in other agencies.

What about that? Maybe we made the right decision with regard to the IRS and the wrong decision with the GAO, the wrong decision on FAA, the wrong decision on TSA. What is the right decision?

Let's forget about the fact that it is 3 to 1. Let's ask ourselves, what is the right decision?

I point out that we are not trying to fix one dysfunctional agency. Goodness knows, the Government is full of them. Instead of addressing them in a general fashion, what we have done is when they get so bad, they come before us and we give them something, some flexibility of one kind or another. But we are not trying to do that here.

What the President is trying to do and what the Gramm-Miller substitute amendment is trying to do is to pull together 170,000 Federal employees, requiring the coordination of 17 different unions, 77 existing collective bargaining agreements—77 existing collective bargaining agreements—7 payroll systems, 80 different personnel management systems, an overwhelming task under any circumstances.

Are we to equate that with the IRS, especially in light of the fact we impose these same requirements on these other agencies to which we gave flexibility? The IRS example should not be the high water mark. The IRS example is the low water mark. That is the least flexibility we can give, less than what we gave to these other agencies and certainly less than what we should give the President when we are reorganizing an entire major section of the Government involving 77 different collective bargaining agreements, 7 payroll systems, and 80 different personnel management systems.

We are comparing elephants to peanuts. With what are we left? We are left with a system that takes the crux of the labor-management difficulties we have seen in times past where we spend months and years negotiating

items in these collective bargaining agreements, such as color of uniforms, whether or not the smoking area should be lit and heated, whether or not the cancellation of the annual picnic was in violation of the collective bargaining agreement. It took 6 years on an army base in St. Louis to resolve that one.

With regard to issues such as those, collective bargaining and the myriad levels of appeals and the indefinite amount of time it takes, all the way to the Supreme Court of the United States, if they can get that far, this compromise so-called takes that totally off the table—totally off the table. This compromise does not allow the new Homeland Security Department to make any changes with regard to labor-management relations under chapter 71 or with regard to appeals under chapter 77.

If one looks at page 3, at least in the copy I have, of the amendment, chapter 97, Department of Homeland Security, my friend from Nebraska and his colleagues establish a human resources management system. OK, sounds good so far because, goodness knows, we need to establish a new system. We have seen the failures of the past, the creations of the 1920s and the 1940s that some would insist we bring over lock, stock, and barrel into the 21st century.

Then it says: Any new system established under this subsection shall, one, be flexible; two, be contemporary but not waive, modify, or otherwise affect a whole list of items, including labor-management relations, chapter 71, and the appeals section under chapter 77.

There are many other issues that are taken off the table, too: chapter 41, chapter 45, chapter 47, chapter 55, chapter 57, chapter 59, chapter 72, chapter 73, chapter 79. This bill takes all of those off the table and says you cannot touch them in your new system.

Mr. SPECTER. Mr. President, will the Senator from Tennessee yield for a question?

Mr. THOMPSON. I will be happy to yield.

Mr. SPECTER. I have been trying to determine whether the provisions of the Nelson-Chafee-Breaux amendment supplements the provisions to title 5 of 7103(b)(1) which says:

The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

The language submitted by the Nelson amendment says: The President could not use his authority without showing that the mission and responsibilities of the agency or subdivision materially changed and, two, a majority of such employees within such agency or subdivision have as their pri-

mary duty intelligence, counterintelligence, or investigative work directly related to terrorist investigation.

If I might have the attention also of the Senator from Connecticut, I had raised this question with the Senator from Connecticut and also the Senator from Nebraska, or talked to their staff, and have been told that the provisions of the Nelson amendment supplement which is now in existing law.

I have been advised by people from the administration personnel department that the Nelson provision replaces existing law which then would leave out the language of national security requirements.

My question to one of the managers of the bill, the Senator from Tennessee who has the floor, is whether this is a replacement for or an addition to?

Mr. BREAUX. Will the Senator yield? Mr. THOMPSON. Let me address it first, if I may.

I don't know whether you would call it a replacement, total replacement, or an addition to. The significant thing, in answer to the Senator's question, under any definition it is a diminution of the President's authority from existing law. It is a diminution in this way: Under existing law, the President can make a determination that an agency or a subdivision of an agency is primarily involved in intelligence, counterintelligence, investigative, or national security work, and he can set aside the collective bargaining agreement.

Under the Nelson amendment, there is an additional requirement for the President. He must also go through the requirement of determining the mission and responsibility of the agency materially changed.

If you have a situation where a person was, in times past, doing a certain thing, and he is going to be brought into the new agency—and perhaps he is doing pretty much the same job; his job has not changed that much. What has changed is the rest of the world. September 11 changed it. Our heightened requirement in security changed.

That whole job where the President has not exercised his authority in times past might take on a different dimension, although he is doing the same job. In the first place, the President might not be able to make this finding. In the second instance, he would be setting himself up for another hurdle, for someone to challenge him in court.

I believe the Senator will agree there has been one instance under current law where people have gone to court to challenge the President, and the President and persons got an arbitrary and capricious standard overcome. It is a tough challenge for a plaintiff to overcome, but the President has to go in there and made a determination as to how much he says. We are talking about national security. How much do you divulge? How much can you get in camera and all of that business? That is current law.

Under this, he has an additional establishment that he has to make that

there is a material change, not with regard to the work of the agency, as in current law, but with regard to the majority of the employees working in that agency.

Mr. SPECTER. Mr. President, I agree with the Senator from Tennessee that there is an additional requirement. I might differ with him as to how substantial it is.

Mr. THOMPSON. If I could add to my answer, under present law the President has the authority to make that determination based on the primary function of an agency involving national security. Under this, national security does not appear. It says primary duty: intelligence, counterintelligence, or investigative work. It does not say national security.

What it does say is that it must be directly related to terrorism. Terrorism is important. But there are national security concerns that do not necessarily have to do with terrorism. It is a limiting of the circumstances under which a President can make a determination.

Mr. SPECTER. Mr. President, if the international security consideration is stricken, there is an enormous difference. But that goes to the basic question as to whether this is in place of or in addition to. If there is a national security consideration, it is non-justifiable. You cannot take appeals.

All the President has to do is come to court and say it is national security. If national security is not in the requirement, then you get into the arbitrary capriciousness, et cetera, on administering appeals.

Perhaps, if I might have the attention of the Senator from Tennessee, I think in listening to the Senator and looking at this, in regard to what you are talking about, it is clearly a replacement. It would be clearly redundant if it were not. It says: No agency shall be excluded as a result of the President's authority unless the President establishes these things.

I don't see how it could be more clear. I don't see how it could rest side by side with current law.

If it is a "replacement," it makes an enormous difference.

I was on the floor earlier in morning business saying if it is in addition to, it is a diminution of the President's power but not very much because of the similarity. But if it is a substitute for—Senator NELSON is on the floor. If I might have leave of the Senator from Tennessee to direct the question to Senator NELSON or Senator LIEBERMAN, is it a substitute for or in addition to?

Mr. THOMPSON. If I may do so without yielding my right to the floor.

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

Mr. LIEBERMAN. Mr. President, responding to the Senator from Pennsylvania, I will begin and still leave the floor with Senator THOMPSON. I think Senator NELSON may want to respond also.

It is my understanding that it is the clear intention of the sponsors of what



I call the Morella-Nelson-Chafee-Breaux amendment that it supplement, not replace, existing language.

I say to the Senator from Pennsylvania, this concern he expresses is real. This is a concern that does not go to the intentions of the sponsors of the amendment. I have not talked to him, but let us reason together how we can make clear in this legislation, in this amendment, what the intentions are. It is not to alter this.

If I were to describe—and I stand to be corrected by the sponsors of the amendment—if I were to describe what the amendment does in this regard, regarding collective bargaining rights, it says to the approximately 43,000 to 47,000 currently unionized employees of various departments that will be moved to the new Department of Homeland Security—and remember, some of these people have worked for decades; some have worked for a few years—while the existing authority that this President, the previous President, all Presidents back to President Carter have had, to suspend collective bargaining rights in the interest of national security, these folks have continued to keep their jobs and be in unions because no previous President has believed that national security was inconsistent with their jobs being unionized.

All we are saying in this compromise amendment is to now, simply because they have been moved from where they are—Border Patrol, Customs agents, FEMA, Coast Guard, civilian employees, whatever—they have been moved to the Department of Homeland Security, to take their right to belong to a union away, you have to show their job has changed.

The President has to declare it and that is it. There is no appeal.

That is my understanding of the intention of the amendment. But on the question, Is the amendment supplementary or does it replace, it is intended to be supplementary. We will work with the Senator from Pennsylvania to make that clear.

I wonder if the Senator from Tennessee would mind if the cosponsor of the amendment spoke.

Mr. THOMPSON. Without losing my right.

Mr. NELSON of Nebraska. If I might respond, I agree with my friend and colleague from Connecticut. It is our intent this be additional authority, an additional opportunity for the President to make a decision about national security. I agree also that were it to be appealed, the national security would just simply eliminate the appeal. I am confident.

If it is not as clear as it needs to be, we will certainly, with our good friend from Pennsylvania, help make it clear. Perhaps this will resolve the concern the White House has about this language. Our goal is to make it supplemental.

Mr. BREAUX. Will the Senator yield?

Mr. THOMPSON. I am happy to yield to the Senator from Louisiana.

Mr. BREAUX. I think it is very clear it is a supplement to the existing language in section 7103. If you read our amendment it says that:

No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1).

Section 7103(b)(1) is the existing language setting out what the President has to do. Ours is added to that. So it doesn't replace the original 7103(b)(1). That is still intact. This is a supplement to that and is to be read in connection with both of them together. The President makes that determination and it is his decision. It is like a teacher giving a test and the teacher is grading the test. The President in this case is the teacher and he grades his own test. He makes that determination and they are both to be read together, so national security is still a part of it.

Mr. SPECTER. Mr. President, I have one additional question, if I might.

Mr. THOMPSON. Before we get off that point, it doesn't matter if you call it in addition or supplement to. It places requirements on the President and the hurdles before the President that are not in existing law.

Do you or do you not, in this amendment, require the President to establish the mission and responsibilities of the agency have materially changed?

Mr. BREAUX. Will the Senator yield for a response to that?

Mr. THOMPSON. Yes.

Mr. BREAUX. The answer is yes. But I would also say, the point you made earlier, if you have the same agency today that, somehow, because things have changed in this country, is in fact moved to a different location, they are doing the same type of work, but instead of doing it with regard to domestic security they are doing it because of an outside threat by terrorists, for instance, that mission has substantially changed. Their mission is no longer to stop, perhaps, Mexicans from crossing the U.S. border into Texas. Their mission is now to stop terrorists from entering the United States. That mission has substantially changed. That meets the test. Who gives the test? The President. Who grades the test? The President. So that mission has changed if the enemy has changed. That is very clear. It is a decision the President would make.

Mr. THOMPSON. If I may respond to that, the ultimate arbiter is not the President in this case. It is some Federal district judge. If the Senator from Louisiana was making this determination, I would be satisfied and happy and content the right conclusion would come. But the Senator has just given a scenario of his opinion as to what would constitute material change. Others may or may not agree with that. But there can be no dispute there is an additional requirement placed on the President.

You can argue it is justified, that we didn't place that requirement on

Jimmy Carter or Bill Clinton or the former President Bush or Ronald Reagan, but we are going to place it on this President at this time. You can make that argument. But I must say I have difficulty in seeing how one can argue this does not place additional requirements on this President to make additional determinations, on the one hand, and with regard to a more narrow area of things, that is terrorism, on the other.

Mr. BREAUX. Will the Senator yield on that point?

Mr. THOMPSON. Yes.

Mr. BREAUX. The point is it is for the last 30 years under the existing law the President having to make this decision, that it has always been possible to go to Federal court under Federal law if someone thought the President hadn't met the existing standard. They could take him to court. We are not changing that at all. In the last 30 years there has been one case. The one case ultimately said the President was within his authority to do exactly what he wanted to do—one case in 30 years.

The existing law says the standard the President has to meet is always subject to going to court saying he didn't meet the standard. We are not changing that at all.

Mr. THOMPSON. I may say in response, the issue is not jurisdiction of the court, whether you go to court. I agree with that. The issue is what happens once you get there. Under the current law, all the President has to establish is as an agency it is primarily involved in national security.

Under this amendment, the President would have to establish something similar to that, and, in addition, the primary purpose of most of the employees within that agency had changed. That is a factual determination that is a colossal headache. It is a hurdle.

Again, you can say the President ought to have that additional hurdle at this time. But again I hardly see how one can make the argument this is not a change in existing law and we are opening up, not just one but at least two, avenues for Federal district court recommendations.

Mr. BREAUX. May I make one final point and then I will sit down.

Mr. THOMPSON. I am happy to yield for that purpose.

Mr. BREAUX. I think we are probably not going to agree on this. I suggest to the distinguished ranking member, what we need around here is a little law and order, and perhaps we could go ahead and vote on it. We could resolve it very quickly. Let's just vote on it and then move on to the next step.

Mr. THOMPSON. I agree with that.

Mr. SPECTER. One additional question.

Mr. THOMPSON. I am happy to yield to the Senator from Pennsylvania.

Mr. SPECTER. Senator GRAMM had made the comment in his earlier presentation that every President since President Carter has had the power to

make personnel decisions on national security grounds. We have just had a discussion with some of the people from the personnel department. We have been cited to no authority as to the personnel decisions under chapter 43, chapter 51, chapter 53, chapter 75 and chapter 77. These are all provisions of the Gramm bill. The only exception for national security is one on labor relations—labor-management relations in chapter 71.

The question I have for the manager of the bill, the distinguished Senator from Tennessee, is whether he knows of any provision, statutory provision or other provision, which will give the President the authority to make personnel decisions on national security grounds?

Mr. THOMPSON. I know of no other. Obviously, if I am proven incorrect on that, we will supplement this record. But this is clearly the area—which points out the importance of it, which points out the whole personnel issue—getting the right people in the right place at the right time with the right pay and the right responsibilities and the right accountability is what this is all about. Therefore, Congress—many years ago, President Kennedy signed the bill—decided that the President should have the right, in personnel, with regard to matters of national security. And even broader than that: Intelligence, counterintelligence, and investigative, which is something I know my friend from Pennsylvania knows a great deal about—investigative.

I do not know whether that has ever been exercised, that particular provision, but it is a pretty broad provision. Every President since Jimmy Carter has exercised that provision. As far as I know, it has not been controversial.

This President Bush exercised it not too long ago with regard to the U.S. attorneys. There was a hue and cry that went up. It was said they may be prosecuting terrorists and we may have to move them around somewhat and all that. Well and good, but you included the secretaries.

Mr. SPECTER. That was on collective bargaining, was it not, as opposed to personnel?

Mr. THOMPSON. I beg your pardon?

Mr. SPECTER. The President exercised his authority under national security grounds on a collective bargaining issue as opposed to a personnel issue?

Mr. THOMPSON. You could say that, but it was under this (B)(3) authority on national security grounds.

Mr. SPECTER. Correct.

Mr. THOMPSON. The secretaries were a part of the unit and the assistant U.S. attorneys wanted to be organized. I am not familiar with that concept. When I was assistant U.S. attorney, when I was brought in. I stayed as long as they wanted me or I wanted to stay. When they elected another President, I was gone. Nowadays we have a civil service system and folks there were trying to take it one step further and unionize.

In light of what is going on in the world, the determination was made it is not a good idea to have people prosecuting terrorists, bogged down with negotiating some of these things, some of which are quite foolish, we have been describing. For better or for worse, that decision was made.

The secretaries were incorporated because the President's authority only goes to taking action with regard to agencies or subdivisions of the agencies. So the suggestion was made to the union representatives at that time, as I understand it, in talking to the OPM people, let's change the law so we can carve out secretaries. And they said: Oh, no, no, no. We don't want to do that.

We do not like the issue framed just the way it is. That created some controversy with regard to the only time this President has exercised authority there. But as far as I know, historically, all Presidents have exercised it. It happens to be controversial.

I simply do not understand. If we are going to debate whether or not this is merely supplemental, and we don't want to really do anything with regard to the President's authority, why in the world can't we go back to the traditional authority that every President has had?

What is the message we are sending to the American people? Do some of our colleagues distrust this President who seems to have the trust of the American people with regard to matters of life and death? From all the polls I can read, I think he is doing the best he can. I think all Presidents always do the best they can. We rally around them in times of war and in times of great national issues.

Do we really want to be fighting for days on end as to whether or not you can say it is significant or you can say it is insignificant? You can say it is in addition to, you can say it is a modification, and you can say it is supplemental. But do we really want to change that now for the sake of—if it is not 40,000 union employees, it is 20,000—those who are in bargaining units? Only 20,000 are union members out of 170,000.

My colleagues who support the Nelson amendment would suggest that we put up these additional hurdles with regard to the President's national security authority only with regard to homeland security. The area where he needs the authority the most is the only waiver area which they would take away. The Labor Department is not affected by this. The Energy Department is not affected by this. It is only the homeland security area. I have great difficulty in understanding the wisdom behind doing that at this time.

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

Mr. THOMPSON. I would be happy to yield.

Mr. BENNETT. Mr. President, I have heard this debate. It reminds me of

why I didn't go to law school. It is easier to hire people with the expertise of the Senators here who have gone to law school to try to explain this than it is to understand it yourself.

I have a very simple question coming from a more simple attitude about this whole thing. Is it not true that the President of the United States has said he will veto this bill if it has this in it? If that is the fact, it doesn't matter if we have 99.400-percent agreement on everything else. The legislation is not going to go forward.

I ask the Senator from Tennessee, who is in closer touch with the White House than I am, if it is not true that the President said he will veto this bill if this is in it?

Mr. THOMPSON. That is my understanding. I think it is important to understand the rationale behind that.

Mr. BENNETT. I am not challenging that. I don't want to trigger another discussion of all the rationality. I want to cut to the question that the Senator from Connecticut asked: Why can't we come together, as we always do with legislation, and get this thing moving forward? I ask the Senator from Tennessee, Should we be aware of the fact that, right or wrong, the President, as is his right under the Constitution, has made his intentions very clear? And shouldn't we be paying attention to that as we make our negotiations as well as all the other issues that have been discussed on the floor?

Mr. THOMPSON. Yes. Indeed. I do not think any of us want to spend all this time and effort on something that basically we think ought to happen in terms of reorganization of an important part of Government for naught and go before the American people and say we have failed because we insist on the status quo with regard to managing this thing but not the status quo with regard to the President's national security authority.

I can't read the President's mind. We learned that our CIA Director declared war to his people some time ago, and he is taking a lot of criticism and abuse, quite frankly, from some of our people who are our allies—one, in particular, I think in a particularly shameless fashion, in order to get re-elected in Germany, has said some things which I think is going to haunt the relationship between the United States and Germany for a while. In the midst of all that—albeit he was talking about the Iraq issue and not this one—I think it put the President in a difficult position when we are spending all this time debating.

Again, this is the one area where we do not like status quo. Whether it is small, whether it is large, whether you slice it thin or you slice it thick, any way you cut it, it is additional steps that the President has to make, and additional opportunities for somebody to take into court, and things of that nature.

I don't think it says there is no basis for a President saying he is going to



veto something and I wouldn't support him just because he threatened a veto. I am sure that I have opposed Presidents who threatened vetoes before. My attitude was to let them veto it because I didn't think it was sound, or I didn't think there was a rationale for it.

I am not afraid to say that one should look past that. I think it is going to be extremely difficult to go before the American people to explain why we insist on passing something that the President says he won't sign. But it is even more important that we look at the underlying rationale.

I have been on the Governmental Affairs Committee ever since I have been in the Senate. The thing I leave the Senate with—the sentiment, the idea, the notion, the feeling—is how difficult it is to make even a little change in the way Government works.

We have seen from Department to Department overlap, duplication, billions of dollars wasted, \$20 billion in 1 year, dysfunction, inability to incorporate information technology systems that private industry has been able to do for years, and human capital crises. We are going to be losing 45 percent of our workforce in about 5 years. We are keeping the wrong people and losing the right people. And we can't pay people what we ought to be paying them. We have seen all of that happen in the operation of government services, money, and so forth. It will hurt us if we incorporate all of that into this new homeland security bill.

You take all of that history, all those GAO reports, all of those IG reports we have seen year after year saying the Government is a mess in many respects, and it cannot pass an audit. It is a management mess. People say "Tut, tut." And you see an article in the paper every once in a while.

We bring them down and chastise them. They go back for another year. The next year they come back, they are still on the high-risk list and nothing has changed.

Take that in context then to the President. We are at war. We now perceive the need to organize our Government—at least a part of our Government—in a different way. We see that old systems in many respects simply need to be redone.

We have a President who the American people are behind and support, and we still can't make any change in our system in terms of how we manage this new Department, in terms of a civil service system that Paul Volcker down at Brookings—it is not a conservative, liberal thing—Paul Volcker and everybody agrees is a broken system that underwhelms itself at every task it takes. And we still, at long last, even in light of this history of failure, even with the loss of thousands of Americans, even if we agreed on the need to reorganize, can't make any changes in a system that is at the heart of the changes that need to be made.

The right people with the right pay and the right motivation and right accountability at the right place at the right time is what it is all about. Yet we are endangering—as we endanger as we speak—not being able to pass a bill to do one thing at long last.

I fear for my country. Once this issue is over, I fear that it will be so difficult to make any changes in the way the Government operates that it is going to collapse administratively of its own weight. There is enough fault to go around. There are a lot of years. This did not happen overnight. But that is the only way, apparently, that we can change anything around here. We cannot come together and agree on changes that need to be made, apparently.

I fear for my Government because if we cannot administer these departments, and we cannot make them run, we cannot get the right kind of people in the right places, none of this other stuff will work.

It all gets back to personnel. You say: Well, we're OK 90, 95 percent. That 5 percent is the nut that holds the propeller on the airplane. It is just a little nut—bolt, let's say—it is very small in weight in comparison to the weight of the airplane, but it is just what holds everything together.

It is a depressing situation when, in light of all this, at long last, we are hung up on some of these issues. The other side says: Well, you shouldn't be hung up. You ought to agree with us. And we are saying the same thing. But I will just pass on the merits of the case for a moment.

We are not making much progress on doing things differently than we have done before, except with regard to the President's national security authority—we ought to diminish that somewhat.

Mr. LIEBERMAN. Will the Senator yield the floor without losing his right to the floor for a moment?

Mr. THOMPSON. Yes.

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

Mr. LIEBERMAN. I thank my friend from Tennessee.

I want to take a moment to try to answer the very good question the Senator from Utah has asked which is, regardless of what our positions are on this particular amendment—Nelson-Chafee-Breaux, a bipartisan amendment—hasn't the President said he would veto the bill if it was attached? I have not heard that specifically with regard to this amendment. Maybe I missed it. And I am glad I have not heard it because of the history I want to recite now.

The President, or somebody in the White House—maybe the President himself—said if the bill, as it came out of our committee, had the provisions with regard to Federal employees, homeland security workers, in it, that the President probably would veto the bill.

I must say when that was said and the media asked me about it. I said: I can't believe the President would veto this bill based on that difference because we agree on 90 to 95 percent of the components of the bill. It is creating a new Department. We all agree it is urgent. Let's get it done. We can argue about this.

As a matter of fact, Governor Ridge was good and honorable enough to say to me at a meeting about this subject a week or 2 ago: I do remember at the beginning you, Senator LIEBERMAN, said to me, Please, let's not get into a fight over civil service. Let's pass the bill. And then we can come back in 6 months—in fact, our committee bill requires the new Secretary to come back in 6 months.

OK. We went ahead. We adopted the Voinovich-Akaka bipartisan reform on civil service in our committee bill. But we did not give the President any of the waivers he asked for and other provisions of civil service.

On the question of this extraordinary authority that Presidents have had since President Carter to remove collective bargaining rights, we set up essentially an appeals process to a Federal board, the FLRA, of which the President appoints two of the three members. That is the one the President made clear he believed would be a cut in his national security authority and said he would veto.

We came to the floor in a spirit of compromise, with my full encouragement. Senator NELSON and Senator BREAUX began to see if we could find some common ground with the White House and the folks on the other side of the aisle. And there was substantial movement. In fact, I think we have been quite flexible in that regard. We may disagree, but one thing I want to say is, at least as I interpret it, we have ended up with a compromise amendment which does not at all diminish the national security authority of this President or any future President if it is passed.

With regard to civil service, it gives the President new authority to change civil service law. It asks that, as we have done quite successfully with the IRS—and it is done in the public sector all the time—the best way to get changes in work rules is to not shove them down the throats of workers; try to negotiate them.

So this bill says: Try to negotiate them with your workers. And if that does not work, send it to the Federal Services Impasses Panel, which has seven members, all appointed by the current President. So it is not a hostile board.

In regard to the collective bargaining rights, we say now—and there is no appeal to the board I mentioned before. The compromise says the President has to make his case, incidentally, not just job by job; the order is he simply has to claim that the mission and responsibilities of the agency or subdivision have materially changed, as Senator BREAUX

said, and the majority of the employees within the agency are involved in national security work. That is final.

Incidentally, there has been one court case, as Senator BREAUX said—we are going to get it, look at it, and maybe enter it in the Record—which said the substantive determination on a question of national security is not reviewable by a court.

Mr. BREAUX. Will the Senator yield?  
Mr. LIEBERMAN. I will.

Mr. BREAUX. I didn't know we had the floor.

Mr. LIEBERMAN. Through the courtesy of the Senator from Tennessee.

Mr. THOMPSON. The Senator does not have the floor. That is OK. I will be happy to yield to the Senator from Louisiana.

Mr. BREAUX. I don't want to belabor this any longer. But I say to the ranking member, there is only one case out of the 30 years where the President's authority was ever challenged to do what he did in moving employees around. And in that case, which was a case in the U.S. Court of Appeals for the District of Columbia, on the question of whether the President had proved the reason for making the decision that he made, the court said—I will have it printed in the Record—

The executive order under review cited accurately the statutory source of authority therefor, and purported to amend an earlier order that indubitably was . . . proper. . . . The act does not itself require or even suggest that any finding be reproduced in the order.

I would say, in layman's language, that basically said: Look, once the President says I am doing this because the mission and responsibilities have materially changed, he does not have to make a finding. That statement in itself is a declaration that the court looks to only. It does not require any supporting findings or any other determination other than the President citing the statute by which he has made that decision. And that is the only decision we had on this issue by a court of appeals.

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

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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, INTERNATIONAL COUNCIL OF U.S. MARSHALS SERVICE LOCALS, 210 ET AL. V. RONALD REAGAN, PRESIDENT OF THE UNITED STATES, ET AL., APPELLANTS

No. 87-5335

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

(276 U.S. App. D.C. 309; 870 F.2d 723; 1989 U.S. App. LEXIS 3700; 130 L.R.R.M. 3031)

April 8, 1988, Argued

March 24, 1989, Decided

Prior History: [\*1] Appeal from the United States District Court for the District of Columbia, Civil Action No. 86-01587.

Counsel: Randy L. Levine, Associate Deputy Attorney General, with whom John R. Bolton, Assistant Attorney General, Richard K. Willard, Assistant Attorney General, Jay P. Stephens, United States Attorney, Joseph

E. diGenova, United States Attorney, Douglas N. Letter and Jay S. Bybee, Attorneys, Department of Justice, were on the briefs, for Appellants. John Facciola and Michael J. \* \* \* assistant United States Attorneys, also entered \* \* \* for Appellants.

Joe Goldberg, with whom Mark D. Roth and Charles A. Hobbie were on the briefs, for Appellees.

Judges: Wald, Chief Judge, and Robinson and Starr, Circuit Judges. Opinion for the Court filed by Circuit Judge Robinson.

Opinion by: Robinson.

Opinion: [\*724] Robinson, Circuit Judge

This appeal summons us to decide whether a presidential executive order purportedly exerting a statutorily-conferred power is legally ineffective because it does not show facially and affirmatively that the President made the determinations upon which exercise of the power is conditioned. We hold that the challenged order is entitled [\*2] to a rebuttable presumption of regularity, and on the record before us we sustain it.

# I

Since 1962, collective bargaining has been available to most federal employees. n1 In 1978, Congress enacted the Federal Service Labor-Management Relations Act, n2 the first legislation comprehensively governing labor relations between federal managers and employees, Congress did not, however, include the entire federal workforce within this regime. The Act itself exempted several federal agencies from coverage; n3 additionally Section [\*725] 7103 (b)(1) authorized the President, under specified conditions, to make further exceptions:

The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) The agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work; and

(B) The provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations. n4

n1 See Exec. Order No. 10,988, 3 C.F.R. 321 (1959-1963).

n2 Pub. L. No. 95-454, tit. VII, 92 Stat. 1111, 1191-1218 (1978) (codified at 5 U.S.C. §§ 7101 et seq. (1982 & Supp. IV 1986)). [\*\*3]

n3 See 5 U.S.C. § 7103 (a)(3) (1982).

n4 Id. § 7103(b)(1).

In 1979, President Carter issued Executive Order 12171 n5 which, after paraphrasing Section 7103(b)(1), eliminated a number of agencies and subdivisions from coverage. In 1986, President Reagan promulgated Executive Order 12559, which undertook to amend the 1979 order to exclude certain subdivisions of the United States Marshals Service. n6 Appelles then instituted an action in the District Court attacking the legality of the latter order. The court rejected their claim that federal marshals are not engaged in protection of the national security, and consequently that the order was invalid on this account, ruling instead that judicial authority to reassess the facts underlying the order was lacking. n7 The court concluded, however, that it retained "general power to ensure that the authority was correctly invoked," n8 and that this necessitated measurement of the order by the conditions specified in Section 7103(b)(1). n9 The court held that inclusion in the order of the President's determinations was a condition precedent to lawful exercise of the power, n10 only in this way, the court felt, could it be demonstrated [\*\*4] that the circumstances contemplated by the Act existed. n11 The court further held that Executive Order 12559 was not saved merely by the fact that it sought only

to amend the 1979 order, which did contain the recitation \* \* \* necessary, n12 Accordingly, the court granted summary judgment in favor of appellees, n13 and appellants came here.

n5 3 C.F.R. 458 (1979).

n6 In relevant part, Exec. Order No. 12,559 provides:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b) of Title V of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, it is hereby ordered as follows: Executive Order No. 12171, as amended, is further amended by deleting Section 1-209 and inserting in its place:

Section 1-209 Agencies or Subdivisions of the Department of Justice:

\* \* \* b. The Office of Special Operations, the Threat Analysis Group, the Enforcement Operations Division, the Witness Security Division and the Court Security Division in the Office of the Director and the Enforcement Division in offices of the United States Marshals in the United States Marshals Service.

3 C.F.R. 217 (1986) (footnote omitted). [\*\*5]

n7 AFGE v. Reagan, Civ. No. 86-1587 (D.D.C. Sept. 23, 1986) (opinion on preliminary-injunction and dismissal motions) at 5-7, Joint Appendix (J. App.) 22-24 [hereinafter First Opinion]. This contention is not before us on this appeal.

n8 Id. at 7, J. App. 24.

n9 AFGE v. Reagan, 665 F. Supp. 31 (D.D.C. 1987) (opinion on summary-judgment motions) at 4, J. App. 32 [hereinafter Second Opinion].

n10 First Opinion, supra note 7, at 7, J. App. 23.

n11 Id. at 8, J. App. 25; Second Opinion, supra note 9, at 4-7, J. App. 32-35.

n12 Second Opinion, supra note 9, at 7-9, J. App. 35-37.

n13 AFGE v. Reagan, 665 F. Supp. 31 (D.D.C. 1987) (order), at 7-9, App. 39.

# II

We first must address appellants' contention that the case is moot. In 1988, after the District Court ruled, the President issued Executive Order 12632, which provides for the same exclusions that Executive Order 12559 does, and contains all that the court deemed essential. n14 Since [\*726] the 1988 order conforms fully to the court's standard, the question areas whether a controversy still exists. Appellants, while maintaining that the 1986 order remains [\*\*6] valid, assert that the 1988 order fully resolves the dispute over validity of the 1986 order, and urge us to vacate the District Court's judgment and dismiss the appeal. n15

n14 Exec. Ord. No. 12,632, 53 Fed. Reg. 9852 (1988).

n15 Defendants-Appellants' Suggestion of Mootness, AFGE v. Reagan, No. 87-5335 (D.C. Cir.) (filed Mar 28, 1988) at 2-5.

Important collateral consequences flowing from the 1986 order lead us to the conclusion that the controversy remains very much alive. Since issuance of the 1986 order, the Marshals Service has unilaterally abrogated the collective bargaining agreement as to affected deputy marshals, thereby depriving them of grievance procedures and other benefits, and has terminated checkoff of union dues, to the serious financial detriment of the union. n16 On this account, appellees have filed unfair labor practice charges with the Federal Labor Relations Authority, n17 which is holding the charges in abeyance pending the outcome of this appeal. n18 Resolution of the charges depends upon the validity of the 1986 order—the precise question now before us.

n16 Plaintiffs-Appellees' Response to Suggestion of Mootness, *AFGE v. Reagan*, No. 87-5335 (D.C. Cir.) (filed Apr. 4, 1988) at 3-5. [\*\*7]

n17 Id. at 4.

n18 Letter from S. Jesse Reuben to Wallace Roney and Tom Mulhern (Nov. 30, 1987), Attachment C to Appellees' Response to Suggestion, *supra* note 16 at 2.

In these circumstances, it cannot be said that the 1988 order has "completely and irrevocably eradicated the effects of the alleged violation" n19—the annulment of Executive Order 12559. n20 We accordingly put the suggestion of mootness aside and turn to the merits.

n19 *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S. Ct. 1379, 1384, 59 L. Ed. 2d 642, 649 (1979).

n20 Id. The Government urges us to dispose of all collateral consequences by treating the 1988 order as a "curative act" and extending its vitality as such back to the date of the 1986 order. Id. at 4-5. It suffices to point out that curative governmental action is not to be given such retroactivity as to demolish intervening vested rights—here those asserted by appellees with a view of remediation. See, e.g., *Hodges v. Snyder*, 261 U.S. 600, 603-604, 43 S. Ct. 435, 436, 67 L. Ed. 819, 822 (1923) (subsequent act may not deprive a person of a private right established under a previous law); *Forbes Pioneer Boat Line v. Board of Comm'rs*, 258 U.S. 338, 42 S. Ct. 325, 66 L. Ed. 647 (1921) (legislation may not retroactively abolish vested rights); *DeRodulfa v. United States*, 149 U.S. App. D.C. 154, 171, 461, F.2d 1240, 1257 (1972) ("a vested cause of action, whether emanating from contract or common law principles, may constitute property beyond the power of the legislature to take away" (footnote omitted)). [\*\*8]

### III

Appellants argue that the District Court improperly imposed upon the President a requirement not supported by the Act. n21 They insist that a presumption of regularity surrounded the promulgation of Executive Order 12559, and thus that there was no need to explicate findings by the President. n22 Appellants also claim that any infirmity in the order is rendered immaterial by the fact that it simply amended the 1979 order, which incorporated findings of the sort believed to be necessary. n23

n21 Brief for Appellants at 9, 13.

n22 Id. at 11.

n23 Id. at 16-19, 22-26.

Appellees contend that the 1986 order did not comply with the Act. n24 They insist that Congress designed the findings as preconditions to the President's resort to the exemption authority; that the courts are the instrumentalities for ensuring that the authority is properly exercised; and that the courts must see some proof that these prerequisites were satisfied. n25 Appellees point to other cases in which courts have invalidated executive action that did not satisfy statutory demands. n26

n24 Brief for Appellees at 13.

n25 Id. at 13-15.

n26 Id. at 15-17, citing *National Fed'n of Fed. Employees Local 1622 v. Brown*, 207 U.S. App. D.C. 92, 645 F.2d 1017, cert. denied, 454 U.S. 820, 102 S. Ct. 103, 70 L. Ed. 2d 92 (1981); *NTEU v. Nixon*, 160 U.S. App. D.C. 321, 492 F.2d 587 (1974); *Levy v. Urbach*, 651 F.2d 1278, 1282 (9th Cir. 1981). In *National Federation*, this court invalidated an attempt by the President to define the "public interest," with respect to the pay of certain federal workers, "without reliance on the explicit standards" set by Congress. 207 U.S. App. D.C. at 100, 645 F.2d at 1017. In *NTEU*, this court issued a declaratory judgment that the President's failure to perform an express,

statutory and non-discretionary duty violated his constitutional obligation to faithfully execute the laws. 160 U.S. App. D.C. at 326-336, 350, 492 F.2d at 592-603, 616. In *Levy*, the Ninth Circuit held that an executive order had to comport with the authorizing statute to be valid. 651 F.2d at 1282. Appellants do not take issue with these unexceptional holdings, and we merely observe that they land no assistance in solving the problem confronting us. [\*\*9]

[\*727] Section 7103(b)(1) makes clear that the President may exclude an agency from the Act's coverage whenever he "determines" that the conditions statutorily specified exist. n27 That section does not expressly call upon the President to insert written findings into an exempting order, or indeed to utilize any particular format for such an order. The District Court, by mandating a presidential demonstration of compliance with the section, engrafted just such a demand onto the \* \* \*.

n27 See text *supra* at note 4.

We deem the familiar presumption of regularity decisive here. It "supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." n28 This presumption has been recognized since the early days of the Republic. In the summer of 1812, President Madison exercised a statutorily-conferred power to call forth state militiaman "whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe." n29 In *Martin v. Mott*, n30 a militiaman objected on the ground that the order did not show facially that the President [\*10] had determined that there was an imminent danger of invasion. p31 The Supreme Court responded:

It is the opinion of the Court, that this objection cannot be maintained. When the President exercises an authority confided to him by law, the presumption is that it is exercised in pursuance of law. Every public official is presumed to act in obedience to his duty, until the contrary is shown; and a fortiori this presumption ought to be favorably applied to the chief magistrate of the Union. It is not necessary to aver, that the act which he may rightfully do, was so done. n32

n28 *United States v. Chemical Found.* 272 U.S. 1, 14-15, 47 S. Ct. 1, 6, 71 L. Ed. 131, 142-143 (1926).

n29 Act of Feb. 28, 1795, 1 Stat. 424.

n30 25 U.S. (12 Wheat.) 19, 6 L. Ed. 537 (1827).

n31 Id. at 32, 6 L. Ed. at 541.

n32 Id. 32-33, 6 L. Ed. at 541.

Over the many years since *Martin v. Mott*, the presumption of regularity has been applied in a variety of contexts, n33 and [\*728] it is clearly applicable to the case at bar. The executive order under review cited accurately the statutory source of authority therefor, and purported to amend an earlier order that indubitably was \* \* \* not itself require or even suggest that any finding be, reproduced in the order. No more than the District Court have appellants suggested any actual irregularity in the President's fact-finding process or activity. In these circumstances, we encounter no difficulty in presuming executive regularity. We cannot allow a breach of the presumption of regularity by an unwarranted assumption that the President was indifferent to the purposes and requirements of the Act, or acted deliberately in contravention of them.

n33 The cases doing so are legion. The following are typical: *INS v. Miranda*, 459 U.S. 14, 18, 103 S. Ct. 281, 283, 74 L. Ed. 2d 12, 16-17 (1982) (specific evidence is required to overcome presumption that public officers have executed their responsibilities properly); *Citizens to Preserve Overton Park, Inc.*

*v. Volpe*, 401 U.S. 402, 415, 91 S. Ct. 814, 823; 28 L. Ed. 2d 136, 133 (1971) (where statute prohibited approval by Secretary of Transportation of federal financing for construction of roadways through parks unless there was no feasible and prudent alternative route, and Secretary approved financing for such a project without making formal findings, Secretary's decisionmaking process was entitled to presumption of regularity); *Michigan v. Doran*, 439 U.S. 282, 290, 99 S. Ct. 530, 536, 58 L. Ed. 2d 521, 528 (1978) (in extradition hearing, presumption of regularity insulates demanding state's probable cause determination from review in asylum state); *Philadelphia & T. Ry. v. Stimpson*, 39 U.S. (14 Pet.) 448, 458, 10 L. Ed. 535, 541 (1840) (where statute required certain conditions to be met before corrected patent could issue, signatures of President and Secretary of State on corrected patent raised presumption that all requisite conditions were satisfied, despite absence of recitals so indicating on face of patent); *Udall v. Washington, Va. & Md. Coach Co.*, 130 U.S. App. D.C. 171, 175, 398 F.2d 765, 769, cert. denied, 393 U.S. 1017, 89 S. Ct. 620, 21 L. Ed. 3d 561 (1968) (Secretary of Interior's determination that limitation of commercial bus service on portion of George Washington Parkway was required to preserve area's natural scenic beauty was entitled to presumption of validity, and burden was upon challenger to overcome it); *National Lawyers Guild v. Brownell*, 96 U.S. App. D.C. 252, 255, 225 F.2d 552, 555 (1955), cert. denied, 351 U.S. 927, 76 S. Ct. 778, 100 L. Ed. 1457 (1956) ("we cannot assume in advance of a hearing that a responsible executive official of the Government will fail to carry out his manifest duty" by reaching a final decision on a matter before complete record required by law was compiled). [\*12]

In ruling to the contrary, the District Court relied heavily upon the prevailing opinion of the Supreme Court in *Panama Refining Co. v. Ryan*. n34 There the Court, focusing on what it regarded as an excessive statutory delegation of legislative power to the President. n35 set for naught an executive order issued pursuant to the National Industrial Recovery Act by striking down the authorizing provision of the statute. n36 The Court held in the alternative that even if the statute was valid, the order would still be ineffective because it did not set forth express findings on the existence of conditions prerequisite to exercise of the authority conferred. n37 The Court observed that to hold that [the President] is free to select as he chooses from the many and various objects generally described in the [relevant] section, and then to act without making any finding with respect to any object that he does select, and the circumstances properly related to that object, would be in effect to make the conditions inoperative and to invest him with an uncontrolled legislative power. n38

n34 293 U.S. 388, 55 S. Ct. 241, 79 L. Ed. 446 (1935).

n35 Id. at 414-430, 55 S. Ct. at 246-253, 79 L. Ed. at 456-464. [\*\*13]

n36 Id. at 430, 55 S. Ct. at 252-253, 79 L. Ed. at 464.

n37 Id. at 431, 55 S. Ct. at 253, 79 L. Ed. at 464-465.

n38 Id. at 431-432, 55 S. Ct. at 253, 79 L. Ed. at 464-465.

Just what situations this declaration encompasses may to many remain quite obscure. That one situation, however, is beyond its ken is crystal clear. The majority opinion cautioned that the Court was "not dealing with . . . the presumption attaching to executive action. . . . We are concerned with the question of the delegation of legislative power." n39 The Court cited approvingly several cases, including importantly *Martin v. Mott*, in which the presumption of regularity was applied. n40 Our

proper course, then, is evident; we are to abide the Court's admonition that was *Panama Refining* does is in applicable here, and that, as in *Martin v. Mott*, the presumption of regularity is pivotal. Indeed, the Supreme Court has never given *Panama Refining* the interpretation it received in the District Court, nor, so far as we can ascertain, has any other court.

n39 Id. 293 U.S. at 432, 55 S Ct. at 253, 79 L. Ed. at 465.

n 40 Id. at 432 n. 15, 55 S Ct. at 253 n.15, 79 L. Ed. at 465 n.15. [\*\*14]

We hold that Executive Order 12559 is effective, and has been from the date of its promulgation. The judgment of the District Court is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

Mr. GRAMM. Will the Senator yield? The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. THOMPSON. I yield for a question.

Mr. GRAMM. Is our Senator aware, while our colleague from Louisiana cites a court case that upheld the President's power to grant a waiver under national security, that the Senator's own amendment changes the criterion from national security to terrorism?

Mr. BREAUX. It does not.

Mr. GRAMM. That, in fact, the very standard that the court has upheld is a standard that he changes. It is clear to those who are looking at making this work that a standard based on terrorism is not as strong as a standard based on national security. So I think what we are seeing, over and over again, is one discussion but another reality.

I just ask the Senator if he is aware that part of what is being done is a change from the standard that gives the President the ability to waive on national security concerns to a standard to waive on terrorism concerns, where there is no comparable litigation, and where there are no comparable precedents?

Mr. THOMPSON. In answer to that, the Senator is correct in that the Nelson language does not mention national security in the section that I am looking at that I think is the operable section and requires that the duty of the "majority of the employees" be engaged in "intelligence, counterintelligence, or investigative work," and that all of it, or any of it, must be "directly related to terrorism investigation."

Mr. GRAMM. That is right.

Mr. THOMPSON. If it is not related to terrorism, the President does not have the authority, the way this is drafted. But I suppose what I wonder is if, in effect, what we are saying—and the Senator is right; we are comparing apples and oranges, it sounds like with this prior case—but if what we are saying is that we want to make it so the President's actions are not judicially reviewable at all, why are we having this debate?

I assume it is because we have an additional hurdle in there that every

once in a while an honest President just couldn't make, such as the job changing. If the President is going to say, I have the authority, I can say whatever I want to say, I guess he could do that then. But if the President really does want to go to the trouble of determining whether or not the jobs of a majority of the people inside of an agency have changed, then that would be a situation where the President could not morally make such a determination.

Mr. GRAMM. Will the Senator yield?

Mr. THOMPSON. Yes.

Mr. GRAMM. Is the Senator also aware that making the determination on the basis of terrorism is very different than making the determination on the basis of national security? In fact, the roots of the President's national security powers go back to the Constitution. It is unclear how the courts would interpret or define terrorism.

Let me ask the following question. I think the Senator made a relevant point. If we all want the President to have national security powers, why are we having this debate? If you want to take the clothing off this amendment, is the Senator aware that in the last provision in the amendment that it strikes a provision in the pending substitute that guarantees that any power the President had under national security the day before the terrorist attack, he would continue to have after this bill? Is the Senator aware that provision is stricken by this amendment?

Can the Senator imagine, if our colleagues really, sincerely want the President to have emergency powers, why they would want to strike that provision?

Mr. THOMPSON. In answer to the Senator, I am aware of that. It is because if that section were in there, it would be inconsistent with this section.

Mr. BREAUX. Will the Senator yield?

Mr. THOMPSON. I am happy to yield.

Mr. BREAUX. Just to make two quick points. No. 1, it is very clear that the Nelson-Chafee-Breaux amendment is a supplement and not replacing the original section 7103(b)(1). We are not replacing the language talking about national security.

The second point, the debate on the floor has been the question about how difficult it would be for the President to make a showing that the mission and responsibilities of the agency have materially changed. I would say very clearly that the only court case in 30 years that has ever challenged the President's authority in making this determination said very clearly that this section makes clear that the President may exclude an agency from the act's coverage whenever he determines that the conditions statutorily specified exist. This section does not expressly call upon the President to insert any written findings into his ex-

empting order or, indeed, to utilize any particular format for such an order.

That is as clear as you can say it. When the President says these conditions exist, that is all he has to show, period. That is the end of it.

I hope that will address the concerns of the ranking minority member about the President having to make findings and do things that he is incapable of doing. This case, the only case interpreting this, says he doesn't have to make any findings. It is left up to him. When he says, I have determined that these conditions exist, I can do it, that is not reviewable. The national security statute is still in place. It is still there. It has not been removed.

Our amendment is an amendment to the existing 7103. The national security language is still in place. It is not struck by our amendment in any way.

The President makes the determination and his determination is not reviewable by court based on the fact that these conditions do not exist. It is very clear.

Mr. THOMPSON. Mr. President, how in the world can we say that the Nelson amendment is a supplement to the current law, when the current law says the President may, and the Nelson amendment says the President may not? Square that one with me.

Mr. BREAUX. Will the Senator yield?

Mr. THOMPSON. In a moment. The current law says the President may issue an order if he determines that the agency or subdivision has a primary function of intelligence, counterintelligence, investigative, or national security work. The Nelson amendment says no agency shall be excluded because of the President's authority, unless the determination is made that the mission and responsibility of the agency or subdivision has materially changed.

You call that supplemental to, or whatever you want to call it, but it was not there before.

Mr. BREAUX. Will the Senator yield on that point?

Mr. THOMPSON. For a majority of the employees, current law says the agency has a primary function. The amendment says the majority of the employees within the agency have as their primary duty. The current law says, intelligence, counterintelligence, investigative, or national security. The amendment says intelligence, counterintelligence, or investigative work directly related to terrorism.

You can call it anything you want on the Senate floor, but the fact is, the current law is designed to give the President authority. The amendment is designed to limit the President's authority. It could not be any simpler.

I yield for a question, if I may.

The PRESIDING OFFICER. The Senator retains the floor.

Mr. BREAUX. For one moment, just to respond specifically to the language in the existing statute that says the President can, if he does certain things. Our language says, he cannot do it unless he does certain things. The

end result is exactly the same. Our language says that if the President makes a determination that these things exist, he can do whatever he needs to do in this area. The language in the existing statute simply phrases it differently, by saying the President can do this if he shows the following. The end result is exactly the same.

Mr. THOMPSON. May I ask the Senator, if the end result is exactly the same, why does he insist on proposing this amendment?

Mr. BREAUX. There are two different points to be made here. The first point is, the way the language was drafted it was intended to do the same thing by saying the President can take action if he does certain things. The answer to that question is, absolutely, yes. It is phrased differently. One is in the negative. One is in the positive. But the end result is that the President can do these things if he shows the following.

The amendment we have says, for the first time in history, you are not talking about moving 5 people or 10 people or 100 people; you are talking about moving thousands and thousands of people. Over 100,000 people are going to be changed. At least we ought to show that the majority of them have something to do with this issue. That is an additional requirement. It is one that he determines.

Mr. THOMPSON. Maybe we have finally settled it. I heard the phrase "additional requirement." You can argue that because this is such a massive job, we ought to hamstring the President a little bit or you can argue because this is such a massive job that we should not.

But the Senator is absolutely correct in that he has laid on an additional requirement. That is the only thing I think we have been trying to establish.

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

Mr. THOMPSON. I am happy to yield.

Mr. LIEBERMAN. Let me say something first and then ask the question. The effect of the Nelson-Chafee-Breaux amendment is to add these two criteria for a judgment by the President in the specific case of the 43,000 currently unionized employees who will be moved to the new Department of Homeland Security. That is all.

The reason it does that is there is some apprehension, even though they have been doing these jobs for years and no previous President has found they are inconsistent with national security and being a member of the union, they want the President to make that determination. But here is the point I want to make about the court case.

There is actually no lessening of the President's authority because the underlying statute says in title 5 7103(b)(1):

The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter—

Which is the collective bargaining chapter.

Mr. GRAMM. Seventy-one?

Mr. LIEBERMAN. It is 7103(b)(1). Then it says:

if the President determines that—

And in the current statute which relates to the entire Federal workforce, it says:

the agency . . . has as a primary function, intelligence, counterintelligence, investigative, or national security work, and the provisions of this chapter—

Collective bargaining—

cannot be applied to that agency . . . in a manner consistent with national security. . . .

The Nelson-Breaux-Chafee amendment adds two other factors solely with regard to the employees who will be transferred to the new Department: The missions and responsibilities, not of the individual jobs but the agency or subdivision of change, and a majority of the employees within the agency have as their primary duties activities related to terrorism.

Here is the point I want to make as I read it. That is why I think there is not even a hair of difference between us in what we are saying. The basic operative point here is the language in the current statute—"if the President determines that." It is up to the President to determine the standards under the current law and the two standards for employees transferred to the new Department that Nelson-Chafee-Breaux adds. The Federal court has said the President's determination under this statute is not reviewable. That goes not just for national security, it goes for the two basic underlying and the two additional requirements that are added under this provision for employees of the new Department.

This is not effectively appealable. In other words, Senators Nelson, Chafee, and Breaux tried to come up with an amendment which responded to the concerns expressed by the White House and our colleagues on the floor that in some way the committee's bill in this regard was lessening the national security powers of the President by subjecting it to an appeal to the Federal Labor Relations Authority. We cut that out now.

I must say, I believe because we are so interested in getting this done we have been quite flexible on this side. I ask my colleagues on the other side, particularly the Senator from Texas, to take a close look at this because of the urgency of creating a homeland security agency. Let's try to find common ground and agree the President has essentially unassailable authority under this provision, exactly what he wants. It gives a small degree of what might be called due process to Federal homeland security workers against an arbitrary action by a President.

Frankly, under this wording and based on that court decision, the odds are a President could act arbitrarily here, too, if he invoked national security.

I thank the Senator from Tennessee for yielding. I guess my question is: Does the Senator not agree with me?

Mr. THOMPSON. Mr. President, let me pose a question to my friend from Connecticut. Is it the Senator's determination that this language he quoted under subsection (2) that "The President may issue an order suspending any provision of this chapter . . . if the President determines that the suspension is necessary in the interest of national security," is it the Senator's understanding that would supersede the new requirement that he find the responsibilities of the agency have materially changed?

Mr. LIEBERMAN. Looking at that section—incidentally, the language, the Nelson-Chafee-Breaux amendment amends decisions made under 7103(b)(1). (b)(2) I think gives the President authority to suspend any provision of the chapter specifically with respect to any installation or activity located outside the United States of America.

It is not diminished at all, not really affected at all.

Mr. THOMPSON. The Senator points out the provision I just quoted is with respect to an agency or activity located outside.

Mr. LIEBERMAN. In responding to the Senator from Tennessee, my reading of that section (2) is simply to restate the President's authority, not only with regard to employees of the Federal Government within the United States of America and the District of Columbia but outside the United States of America and the District of Columbia.

Mr. THOMPSON. Mr. President, that is a big difference. I do not think it has anything to do with employees inside the United States of America. I think that section only has to do with employees outside the United States of America.

Mr. LIEBERMAN. I think that is right.

Mr. GRAMM. Will the Senator yield?

Mr. THOMPSON. Which would leave us, once again, in a situation where the President is having to make a new determination because there is "concern"—concern we did not have with regard to any of these other Presidents, but we have concern with this President at this time. One can argue it is minimal. One can argue it is almost the same.

We are creating some interesting legislative history here. I wonder how anybody can ever contest the President after this discussion, quite frankly, but if that is the case, why in the world do we want to announce to the world we want to spend 2, 3, 4 days arguing over whether or not to diminish the President's authority a little bit or whether or not to put up an additional hurdle before him, when he is saying to us and the world—presumably, I do not know how onerous this is going to be; perhaps it will not be very onerous at all. It is just not right. It is just not right to diminish the President's authority

or to put up additional requirements of him at this time.

Mr. GRAMM. Will the Senator yield? The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. BENNETT. Mr. President, I ask unanimous consent I be allowed to make a comment without the Senator from Tennessee losing the floor.

Mr. THOMPSON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I have been here for an hour and a half now listening to this debate, listening to the argument going back and forth, and the conclusion I think I hear from the Senator from Louisiana and the Senator from Connecticut is an interesting one. It may not be the conclusion they really think they came to, but the conclusion I hear them saying, particularly in the final statements that took place, is they put this in the amendment to give the labor unions a sense of security but, in fact, that security is not there, so we can vote for the amendment with a clear conscience; that they did what the unions wanted them to do so they would not feel nervous about being put into this new Department, but reading their interpretation of the law, they are saying it really does not make any difference.

The last comment from the Senator from Connecticut that even an arbitrary and capricious action by a President—and he made it clear he did not expect this President to do that, and I appreciate his graciousness in that, but then in a hypothetical, an arbitrary or capricious action by a President could still go unchecked under this amendment and, therefore, we ought to embrace it.

If that is, in fact, the case—I will look at it very closely with some help from people who are burdened with a legal education, as I am not—if that is, in fact, the case, I think the Senator from Connecticut has just exposed himself to a little criticism from the unions.

How can he have misled them into thinking he was doing something substantive on their behalf and at their behest if, in fact, it is not substantive and the President would get everything he wants?

Of course, the same question arises from the White House. If, in fact, the White House is seeing no substantive change and this is more of a cosmetic kind of a thing, why are they threatening to veto?

So I am now going to leave the floor and go to lunch. I have some time scheduled later in the afternoon when I will talk about something else, but I have found this to be a very interesting exchange. Without in any way attempting to diminish the sincerity, integrity, or intelligence of those who have engaged in the debate on both sides, it strikes me a little like the medieval debate about the number of angels who can dance on the head of a pin.

If, in fact, as the Senator from Louisiana said and then the Senator from Connecticut summarized, the net effect of this amendment in this area is to not change the law or ultimately take any of the President's power away—

Mr. GRAMM. If that were the effect.

Mr. BENNETT. The question arises, why are we doing it? Either there has been a misleading of the unions so they feel a false sense of security that they do not really get or there is, in fact, some substantive change that we are supposed to not notice on this side of the aisle.

As I say, I do not challenge the intelligence, the integrity, or the motives of anybody who has engaged in this debate, but as a layman, standing here for an hour and a half, listening to the debate go back and forth, I draw that conclusion. I find myself quite perplexed over the intensity with which this battle has been fought if indeed that is where we are.

I see the Senator from Connecticut is on the floor, and I will be happy to yield to him for whatever comment he may wish to make.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. I want to respond, and then I will yield the floor. I know other Members in the Chamber wish to speak.

I appreciate what the Senator from Utah has said because I think he has come to the nub of it. Part of what this dialogue has reflected is how much people on our side, including the folks from the Federal worker organizations, want to get this bill passed. There has been a substantial change from the original wording of the committee bill, which did allow an appeal to the Federal Labor Relations Authority from the decision of the Secretary—or administration in these cases.

Effectively what we have done is to add two more criteria for the President to base his decision on as to whether union membership is inconsistent with national security, but we have not diminished the President's authority to make that decision. In other words, the same high authority he has had, sustained by the court decision we have cited and the two criteria that are there now, he has that same power under the two we have added.

The Senator asks: What have we done then? By adding two more standards, what we have done is to establish a kind of protection against truly arbitrary use by some future President of this extraordinary power the statute gives. What is the protection against arbitrary? The President has to make the case that he has determined, and let me read from the Nelson-Breaux-Chafee amendment: Mission and responsibilities of the agency or subdivision has materially changed—and this is only with regard to these employees who have now been moved to this Department; the President's authority remains unchanged with regard to every other Department—and that a major-

ity of employees within the agency or subdivision have jobs directly related to terrorism.

I agree with the Senator. I have forgotten the word he used, and I wish I could recall it, but the Senator is wondering now why we are spending all of this time arguing about this. In my opinion, we should not. We should be adopting the whole bill and sending it to a conference committee so we can get it done soon and everybody, beginning with the President, can claim a victory in the name of national and homeland security.

Mr. BENNETT. Mr. President, I thank my friend from Connecticut, the chairman of the committee, for his attitude and his approach to this. I will, in good faith, go back and examine it. In honesty, though, I must indicate I am not sure examining it is going to change my position, for this reason: The Senator from Connecticut has magnanimously, and I think accurately, said he does not believe our current President will abuse this power, and he has referred to some future arbitrary President.

Nonetheless, he says there will be some kind of review. At the risk of sounding paranoid myself, I think that is enough of an opening, enough of a crack in the door, for some future union leader, who might not have the same kind of motives that are being attributed to our current President, to go through that opening and, for reasons totally unrelated to the mission of the Department, reasons totally unrelated to the protection of the American homeland, decide that he or she wants to pick a fight with the President and set in motion a series of hearings and activities within the civil service procedure.

I do not know how many other Members of this body have served in the executive branch and been involved in civil service procedures. I have. I went into the executive branch thinking I knew something about personnel. I had hired and fired, I had been involved in difficult challenges, and I thought I understood the process. I was the biggest babe of all the babes in the woods when I got into that circumstance. I ended up with an employee who was totally incompetent, totally unqualified for the position into which I innocently and foolishly placed her. I immediately tried to get rid of her.

I served in the administration for 2 years. Then I left the administration, and while I was in my private life, I got a phone call saying I had been summoned to a civil service hearing on the case of this woman X number of years after I had left the Government. I went to her hearing, and I testified in her hearing as to the situation. I was astounded that it was 3 or 4 years—whatever the amount was—after we had initiated the action to remove her from the position for which she was totally unqualified. It had dragged on that long. I had finished my service in the executive branch. I was out in private



practice. I was called back in to testify, and it was made clear to me that this hearing was by no means going to be dispositive of the case; it would go on beyond that.

If there are additional hurdles being placed on the President's authority in this Department by this amendment, in all good faith, with a sincere attempt on the part of my friends who are working on this amendment to try to come to a resolution, my hesitancy stems from that experience. If indeed some labor leader decides he or she wants to pick a fight with the President and use those additional hurdles for some motive unconnected with national security, I am not comfortable giving them that opportunity, particularly when they do not have it now.

The argument is being made, they are being transferred into a new Department and so they need to be protected. The statement by the Senator from Connecticut, that I quoted back to him and he said I was probably right, is this is being done to give them a sense of protection and comfort but that substantively it is not any different. It may very well be that at the end of the day, after it goes through the courts, substantively it will not be any different. The position taken by the Senators from Louisiana, Connecticut, and Nebraska will be exactly right. But if that day comes after 6 years of adjudication and fooling around, with a Department that must be almost at hair-trigger capacity to deal with the threat, I am not going to accept that. That is my concern. To say at the end of the procedure the President will not have lost any power, all he will have had to do is go through some additional procedures to exercise his power and therefore nothing is threatened, is to say we are not focusing on the mission of the Department.

The whole reason we are creating the Department is so we will have faster response time, so we will have better coordination on a threat that did not exist when these situations were created in the first place.

Mr. NELSON of Nebraska. Will the Senator yield?

Mr. BENNETT. I am happy to yield, with the understanding I do not lose the floor.

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

Mr. NELSON of Nebraska. I suggest the Senator from Utah makes a good point in terms of not wanting this to go through an endless review process that will take years. It can take a substantial amount of time and tie in knots the entire operation. The reason that is unlikely, and most likely impossible, is the court case, the one case in 30 years, where it is made clear that if the President performs by making all the points that would be required by law, that is essentially nonreviewable.

All that is being proposed here is that there are two additional requirements that can be met, as well, and if the President dots the i's and crosses

the t's and in good faith makes a determination that the court is not going to review it. It is important the court would not review it if he did not dot all the i's or cross the t's. I expect this President and the future President to do the right thing under the law.

That being the case, there is absolutely no reason to believe this will be tied up in court or there will be endless appeals by those who feel aggrieved by the determination. That is why it is important, whether you transfer these individuals or you go with the status quo, this body in the past and I think this body today has dealt with establishing requirements that must be met so that when they are met, due process has been achieved, the courts are not going to meddle in this process, and they are not going to review the administrations of the Congress when it comes to national security.

Mr. BENNETT. I thank my friend from Nebraska. But he comes back to the basic statement I made to the Senator from Connecticut. If in fact this is not really changing anything, and in fact there will be no significant delays, and if in fact the President has not lost any power, why is the amendment being offered? Why don't you just say if, in fact, nothing is going to change, we will not change it? And the issue that has been raised again and again is that the Senator from Texas put that exact statement in his amendment, he and the Senator from Georgia, that says nothing in this bill shall diminish the existing power of the President and the amendment before the Senate makes it very clear that statement has to go.

There has to be, by definition, some diminution of the power of the President.

I remember in such few Supreme Court cases I have reviewed one situation where the Court was confused what Congress was doing—surprising the Court would ever be unclear what we do; it is always so clear—the Court came down on the one side of the case with this comment. It said: We cannot assume that Congress committed a vacuous act. Therefore, they must have intended to have changed something or they wouldn't have passed this.

That is where we are here. We must, if we adopt the amendment proposed by the Senator from Nebraska, be assuming some diminution of the President's power. If not, why are we doing it?

Once again, I am perfectly willing to talk about diminution of the President's power if it is arbitrary and capricious and if it is damaging to the due process of employees. But this Department is not the place to experiment with that. This Department is the Department that is geared for quick action, for quick protection of Americans under attack, and of all places where the President's ability, the Secretary's ability to move quickly should not be hampered by additional requirements, this is the place. This is the Department where that should not happen.

To turn that proposition on its head and say that the President's power is as it is in every other Department, but it will be slowed down in this Department, is something I don't understand.

Mr. NELSON of Nebraska. If I thought this would slow down the process, if I thought this was a diminution of the President's authority to make determinations, I would not offer it.

It is important to distinguish between the threshold requirement and the President's power. If you want to defeat this, people will say it diminishes the President's power. It does not diminish the President's authority to make determinations. It does not, through the court cases, diminish the President's power and authority to make certain determinations.

In this particular situation, the threshold decision about whether or not the President meets that decision without regard to the President's power to make the decision that there has been a material change, that clearly is a reasonable requirement in this particular situation because you are moving one group from their current situation to another situation. The question will be, Is there a material change as it relates to those responsibilities that are set out? It does not diminish the President's power or authority.

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

Mr. BENNETT. I will yield the floor. The Senator from Texas wants to get into this, and I am more than happy to facilitate that for him.

Let me close my statement with this comment. By virtue of my own background and my committee assignments, I happen to find myself in front of groups made up of executives perhaps more often than not. I asked this question, whenever this subject comes up, to the executives that are talking to me about this Department.

The first question: Have any of you ever been involved in a major corporate merger? Immediately, the smiles start around the room as the understanding of the implications of that question get through to them. They nod, yes.

I ask: Has it been a pleasant experience? In every case, the answer is no. Mergers are always difficult.

Here is a merger involving 170,000 employees gathered together from some 22 different agencies, each with its own culture, background, personnel procedures, and understanding. Anyone who thinks Government employees live in a monolithic world, regardless of which agency they work in, lives in "Alice in Wonderland." Every agency has its own culture and its own way of doing things, and it is almost impossible to get them to deal with each other.

Then I say to them: If you were tapped by the President to be the chief executive officer of this new agency and you were told the employees who came into the agency in the process of it being created brought with them, by

law, all of the personnel procedures and activities they had in their previous agencies, would you take the job?

I have not found a single volunteer yet. Basically, aside from the legalities of this—which, again, as a layman I hear the lawyers arguing back and forth—aside from the legalities, that is what drives me in this debate. I want to view this as an agency which is governable when it is created.

As I said on the floor before, I lived through the creation of the Department of Transportation and all of the difficulties connected with bringing those groups together—a big Department but, compared to this, relatively small. I was at the shoulder of the second Secretary of Transportation, John Volpe, as he wrestled with those problems. I saw firsthand how essential it was for him to have flexibility in a variety of ways which the organized government employees unions did not want to give him. He got it in the creation of that Department by congressional mandate, and he was able to do what he was able to do by virtue of that.

I was not around, but I can read about the creation of the Department of Defense, which was on the scale that we are talking about here. It is not beyond the importance of our understanding how significant this challenge is going to be for us to recognize that the first Secretary of Defense committed suicide under the pressures of trying to make this all work. The Department of Defense probably never did work until after the Goldwater-Nichols Act, some 15 or 20 years after it was formed.

Let us understand as we go forward that we should be erring on the side of giving the Secretary and the President more flexibility, more authority, more ability to move quickly rather than less.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I do not know how much you learn by having this job, but one thing you learn is patience.

Let me say it is probably a good thing I didn't get the floor earlier because I would have gotten up and accused my colleagues of insulting my intelligence. But now I realize that the authors of this amendment have not the foggiest idea of what this amendment is about or what it does.

Let me just start. There are a lot of points I want to make, but let me just begin with some English points. Before we get to legal points or security points, let's just talk about the English language.

Our colleague from Nebraska said: I wouldn't do the amendment if I thought it limited the President's power.

I would like to ask him to read the words of his amendment, on page 12, under the section that has to do with the President's labor-management

powers. Remembering the President has the power in the name of national security to not put people out of the unions. That is a made-up term that the opponents of the President use over and over and over again. It is totally false. Nobody can take people out of unions. What it does is set aside work rules that inhibit the ability of the Department to do the job of providing national security. So the President has this exclusionary authority under the name of national security.

Our colleague from Nebraska, Senator NELSON, says his amendment does not reduce the President's power. Let me start with the English language, and let me read line 10 on page 12. This is a heading, and the heading is: "Limitation On Exclusionary Power."

If it is not limiting the President's power, what is it doing?

Mr. NELSON of Nebraska. Will the Senator yield?

Mr. GRAMM. Let me make my point. I have listened here for 2 hours, trying to get the floor.

If this is not limiting his exclusionary power, this is false advertising. It does, in fact, go on and limit his power. But that is not the end of it.

Then, on page 14, you have a new section heading, and what do you think the first words of it are? "Limitation Related To Position Or Employees."

Our colleague from Utah said he is not a lawyer and this is a hard debate. I am not a lawyer either although I guess over the years you learn how to read legal documents. But I do know a little bit about the English language. When heading after heading after heading is about limitation of power, you are talking about limiting power.

Let me just start from the beginning because our colleague from Utah came over, listened to a lot of things that didn't make any sense to him, and he made a point. The point was, either this amendment does nothing or the authors of the amendment are not explaining what the amendment does.

I will—certainly to my satisfaction, hopefully to others'—convince people that this amendment does a great deal. This is not some cosmetic change, where members of organized labor are being deceived. It looks to me as if they wrote the amendment and they knew exactly what they were doing. Let me start with just some obvious points.

Besides the fact that the amendment is full of sections with the word "limitations" in the title, the amendment strikes the following language from the pending Gramm-Miller substitute. Let me read the language. You heard our colleague from Nebraska say we are not trying to take power away from the President. Let me read you the language they strike.

The language reads as follows: notwithstanding any other provision of this act . . .

I think people understand English. That means no matter what this act says.

The language they strike says:

. . . nothing in this act shall be construed to take away the statutory authority of the President to act in a manner consistent with national security requirements and considerations as existed on the day of the terrorist attack on September 11, 2001.

In other words, no matter what else this amendment said, if it had not struck this language, the President would have the same national security power after this bill became law that he had on that horrible day, September 11. But guess what. This language is stricken by the amendment of the Senators. If they were not changing the President's powers, why did they strike this provision? They struck this provision because they may not know they are changing the President's powers but the people who wrote the amendment know they are changing the President's powers. And if they did not strike this provision, then everything they did in limiting his power would be nullified.

Let's just start with what they did. Let me remind my colleagues of something that the opponents of the President desperately want you to forget. The President, in terms of waiving these labor agreements that limit his ability to hire new people, move people, and to put the right person in the right place is also limited by these agreements that restrict the ability to change policy concerning carrying firearms, to change the physical makeup of inspection areas at customs, and to deploy a Border Patrol agent in an area where there is no laundry.

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

Mr. GRAMM. I will be happy to yield, but let me just get through my basic points, and I will be happy to yield. I want some coherence to it.

Mr. LIEBERMAN. It is a factual question. I think the Senator is confusing the situation.

Mr. GRAMM. Let me go ahead and yield if the Senator is going to talk.

Mr. LIEBERMAN. The Senator refers to the power of the President in reference to waiving elements of collective bargaining agreements. That is not affected by this section. I think it is the right to join unions or remain in unions the President can override here, not elements of the collective bargaining agreement.

Mr. GRAMM. Let me reclaim my time. It is the collective bargaining agreement and elements of it that the whole waiver is about. And I will get back to that.

Let me go back to my point. The President did not ask for any additional authority in the name of homeland security to waive collective bargaining agreements. He never asked for additional power because every President since Jimmy Carter has had that power and every President since Jimmy Carter has used that power.

You might ask yourself, if the President never asked for that power, why are we debating it? Why are we debating the President's waiver power if he didn't even ask for new power?

The reason we are debating it is the underlying Lieberman amendment and the amendment that is proposed by Senator NELSON take power away from this President that every President since Jimmy Carter has had.

We are in the remarkable circumstance that terrorists have attacked America. They killed thousands of our people. We are writing a bill to give the President the tools he needs to fight and win the war. The first provision in this bill is to take away from the President powers that every President since Jimmy Carter has had. It almost sounds unbelievable. But believe it.

A second point that is interestingly enough even more unbelievable: Under this bill and this amendment, the members of Government who are moved into the Homeland Security Department would find themselves in a position that the President, in the name of national security, has fewer powers in hiring the right person, putting them in the right place, and moving them than he does at the Labor Department or the Office of Personnel Management or any other part of the Government. Interestingly enough, this bill and their amendment limits the President's emergency powers—not for the Government as a whole but only for the Department of Homeland Security.

My third point is that we have heard this talk about these court rulings. It is a very good point. But, unfortunately, it makes the case against their amendment. These court rulings are on the basis of national security. The Constitution gives the President power as Commander in Chief.

When the President in the past has made a ruling based on national security—Senator BREAUX made the point, repeated by Senator NELSON—those decisions have not been judicially reviewable or the court has deemed them not to be judicially reviewable. That is a pretty substantial power. But it is a power rooted in the Constitution.

Guess what they do with this amendment. They change the President's power so the President has the power to move only in terms of their waiver—not on the basis of national security but on the basis of terrorism.

Terrorism is not mentioned in the Constitution. Terrorism has not been litigated. Maybe it will be litigated and the power will be upheld. But the Office of Personnel Management, the experts in this area, the person who will probably be the Secretary, and the President of the United States, believe that changing the President's waiver power and basing it on terrorism rather than national security is a diminution of his power.

If somebody didn't think so, why is it being done?

Let me go my fourth point. We have heard a lot of discussion but let me try to get down to the facts. Again, we are all entitled to our own opinions. We are not all entitled to our own facts.

There are 20,000 union members among the 170,000 people who are going to be moved into this Department. There are 20,000 other people who are covered by collective bargaining. But they are not union members.

Under this amendment, rather than the President having his broad exemptive power to put the right persons in the right place at the right time, the President would now have to enter into negotiations. So we set up the Department. We are trying to get moving. We are trying to prevent another attack. We are trying to prevent Americans from dying. This is pretty serious business, in other words.

What does the new Secretary have to do? He shows up, and 170,000 people are moved. He comes into his office. What is the first thing he has to do under this amendment? Double the number of people at the principal ports of entry? No. Change the disposition of agents to keep nuclear weapons from being brought into New York Harbor? No.

The first thing the President has to do is to enter into binding arbitration with a labor union that represents 20,000 of the 170,000 people who work for the Secretary.

Under this amendment, 20,000 union members and their unions would negotiate on behalf of 170,000 people, and 20,000 of them aren't even members of the union.

Talk about a power grab—this is an extraordinary power grab.

Before the Secretary can do anything, he has to enter into binding arbitration with these 17 unions that are representing 20,000 of the 170,000 people in this Department, and only 20,000 of them are union members. He has to enter into a binding arbitration with those unions that will bind the work rules for 150,000 people who are not even union members.

What happens if the unions won't agree to the change in rules that would change the disposition of people in the Department to try to prevent a terrorist attack? What happens? You have binding arbitration. So here we are trying to protect people's lives, and rather than sending agents where we need them to go, we are in binding arbitration.

Then a panel, which has the historic role of making decisions about whether a governmental department had the right to cancel a Christmas party or not, is now going to be making a decision governing the running of the Homeland Security Department.

Mr. SESSIONS. Mr. President, will the Senator yield for a question on that point?

Mr. GRAMM. Yes. I would be happy to.

Mr. SESSIONS. Mr. President, I served in the Federal Government bureaucracy for about 15 years as a Federal attorney and as a U.S. attorney. Trust me, Federal employees, as Senator BENNETT said, have tremendous rights.

I was rather shocked, in connection with some of the things Senator

GRAMM has been saying, to read some recent developments.

After September 11, is the Senator aware that the Customs Service wanted to require its inspectors—management—at 301 ports of entry to wear radiation detection pagers to help detect attempts to import nuclear and radiological materials across our borders, and that the National Treasury Employees Union—members of which are some of my good friends—objected saying that wearing the pagers should be voluntary and fought to invoke collective bargaining on the issue, which would have taken at least a year to resolve?

Mr. GRAMM. First of all, I have to say to my colleagues that I am not aware of that case. But I am aware of the case at the Boston airport where Customs wanted to change the makeup of the inspection room to make it more efficient, and the National Treasury Employees Union appealed it to the FLRA, and they sided against Customs and the changes were not made.

I am also aware that when there was an effort by INS to put more agents at the airport at Honolulu because of the large number of flights coming in and more inspectors were needed. In this case, the labor union representing the INS employees in Honolulu filed a case with FLRA saying it violated their contract to hire more agents. Guess what. The FLRA ruled in their favor.

Maybe someday you could get it straightened out. But what happens if by not getting it straightened out in time somebody's mama or somebody's child ends up being killed?

Mr. SESSIONS. Is the Senator aware that after September 11 the Customs Service signed a cooperative agreement with several foreign ports because we are concerned about ports being used to ship weapons of mass destruction here, and the best way to do it is to identify that as a foreign port before it gets here—that they signed a cooperative agreement allowing our inspectors to preinspect cargo abroad before it sailed here.

The Customs Service wanted to send its best agents to these ports because these are sensitive foreign assignments, and the National Treasury Employees Union objected, saying that internal union rules should determine who should be sent on these assignments, not the Customs Service managers.

Mr. GRAMM. I am aware of the case where an effort was made, in terms of foreign deployment, to pick the most able people because you have a limited number of people. That decision was overridden by the FLRA. They said you had to send the most "senior" people in terms of seniority.

I would say these are exactly the kinds of problems the President is trying to deal with. The President is not trying to deny people the ability to pay union dues, if they choose. The President is not trying to discriminate against people based on race, color,

creed, national origin. The President is trying to put the best person in the best place at the right time. The Senator has just outlined several examples of where we have not been able to get the job done in the past, and even where we have gotten the job done, that it has often been 14 months later.

The point is, these terrorists—and we know there are thousands of them—are not taking a sabbatical while we are having this debate.

Mr. SESSIONS. If the Senator will yield, in reference to Senator BENNETT's comments, merging these agencies is a difficult task. They come with different backgrounds and legal prerogatives and cultures that they have had. As a U.S. attorney, I represented every Federal agency in my district, which would include the Corps of Engineers, the Coast Guard, Treasury, Customs, the INS, the DEA, the FBI—every agency that was there. They all have a little bit different rules.

If we are going to form a new agency, we ought not diminish the President's power because it is going to be difficult enough as it is to bring this thing together in a coherent whole.

I believe the Senator is making a good point. I have listened to the debate that has gone on for some time. It seems to me quite clear the amendments that have been offered—the objections that have been made to your bipartisan bill, the Gramm-Miller bipartisan bill—have been designed to diminish the Executive's ability to coordinate quickly that new critical agency for our defense.

I thank the Senator for his leadership on it. I think it is important. The President should not allow his office and the office of future Presidents to have an even more difficult time than we already have with personnel.

For example, I have had many agency heads come to me and ask me about criminal activity by Federal employees. And I would say: Why don't you just fire them? They would say: You don't know how hard it is. We have a criminal case. Please prosecute this case; otherwise, we will be years removing this person.

It is amazing sometimes for the public to learn how difficult it is to manage in a Federal agency. It is far more difficult than private agencies. In the end, it hurts good employees of which there are so many of them out there. It keeps them from being promoted, and it undermines the ability of the agency to be effective.

I thank the Senator for his courageous leadership.

(Mrs. CLINTON assumed the chair.)

Mr. GRAMM. Madam President, let me finish up my remarks because I have spoken a long time.

Although I could give a lot of concrete examples, let me just give a couple of them: Under current law, the President has the ability, by declaring a national emergency, to change the work rules for the Border Patrol. And every President since President Carter

has had that power. This amendment would take away these emergency powers from the President because under a current agreement which the Border Patrol operates, there cannot be any prolonged deployment of Border Patrol agents in areas that do not have a series of amenities, including dry-cleaners.

Under existing law, the President would have the ability to declare a national emergency and move Border Patrol agents to areas where there was a critical threat. He would not have that power under this amendment. Let me explain why.

In order for the President to be able to use his emergency powers, the President would have to find, after the Department is created, that the position and duties of the person had been materially changed. By the way, you guessed it, the first word of the heading on page 14 of this amendment is "Limitation"—"imitation Relating To Positions Or Employees". Who are we limiting here? The President. Every one of these headings on limitation represents a limitation of the President's power.

Let me give you an example. A Border Patrol agent is a Border Patrol agent, and after the creation of this Department, they will still be a Border Patrol agent.

I asked that the amendment be changed to say that either the function had changed or the threat had changed. That proposal has not been accepted.

What it would mean here is that if the President tried to use his powers to station a Border Patrol agent, on a prolonged basis, on one of the many areas along the border that did not have restaurants, churches, or dry-cleaners, there could not be a waiver to station them in that area. Now, I represent more of the border than any other Senator besides my colleague from Texas and I know that there are many such areas.

The problem is that while they are doing the same thing, the threat is different. Before it was a bale of marijuana or a box of cocaine or an illegal alien we were talking about. Today we are talking about an anthrax capsule or a chemical weapons vial or a biological agent thermos or a nuclear device. But yet, under this amendment, the President would not have the power to make that necessary change.

Our colleagues say a Border Patrol agent is still a Border Patrol agent and nothing has changed.

Madam President, everything has changed. After 9/11, the world has changed, but not the thinking of the President's opponents. It has not changed.

So let me sum up by simply pointing out why this amendment is unacceptable to the President, why he has said he would veto a bill that contained this amendment, and why we can't fight and win the war on terrorism with this amendment as part of the law.

Now, there is no guarantee that we are going to be successful in stopping

terrorism with a good plan, but General Eisenhower once said: A good plan does not guarantee success, but a bad plan does guarantee failure.

This is what this amendment does. It takes away power that every President since President Carter has had and used. It sets a higher standard for using national security powers in the one agency of Government that is designated to protect the homeland security than it does any other Department of Government. So OPM would still have the same emergency powers that are denied to the President for homeland security, but he would not have them here. The whole standard by which the President could intervene is changed from national security to terrorism.

We take a system where we in essence say to the President: OK, you want these 170,000 people brought together in one agency. We want you to give up national security power. If you will give it up, we will put together the Department. In other words, we will put it together if we can take away your power to actually run it.

What this amendment would do is allow unions that have only 20,000 members out of the 170,000 people that will be brought into the agency, and it makes them the bargaining agent for all 170,000. We are going to hire somebody to fight terrorism. He is going to think he is coming in to fight terrorism, and he is immediately going to be in binding arbitration. And then, if the unions won't agree to his plan, it goes to a labor board that has the historic function of deciding whether a department can cancel Christmas parties or the color of uniforms or things of that nature. We set up an unworkable system.

Finally, powers the President says he must have, powers related to labor-management relations and appeals, are taken away. So the amendment before us is no effort at compromise. I don't doubt the goodwill of the people who have offered it. But the plain truth is, it is further away from where the President can go than the last time we were discussing this issue.

There has been only one compromise, and that compromise is the Gramm-Miller substitute which made 25 changes in the President's bill and preserved for Congress the power of the purse. It also did restrict the President's emergency powers but in ways that made sense. We said the President can't be arbitrary and capricious. We said the President cannot discriminate on the basis of race, color, creed, national origin, and the list goes on. But the bottom line is that we realized we were fighting a war against vicious killers and the President needed the power to get the job done.

We need to give the President that power. Our colleagues talk about the President using that power. The way it is now restricted, the only thing the President can use the power for is to fight terrorism, to put the right person in the right place at the right time.

My point is, this amendment is not significantly different from the underlying bill in that it takes away powers the President already has, and it does not give him the flexibility he needs. The President has said he would veto it.

In the end, if we want to get a bill, the logical thing we should do is try to reach a compromise. I do not see this as a compromise. I don't see anything in it that is a compromise. It takes power away from the President he has today. I believe it is totally unacceptable.

I have given the authors of the amendment, in working with the White House, the changes they would have to make for the President to be able to accept it. I hope they will consider them. But the problem is, in order to give the President the power he needs to fight and win the war on terrorism, you have to change business as usual in Washington.

If there has ever been an amendment that was committed to the status quo of business as usual, don't change anything, this is it. The amendment and the underlying bill are really based on the premise that government is to serve the people who work for the government, not to serve the people of this country, and the rights of these workers, as we have defined them in a bill that is now over 50 years old in its fundamental components. This is the equivalent of operating a horse and buggy on an interstate highway. When we are talking about protecting the lives of our people and homeland security, this amendment and the underlying bill still hew too much to the idea business as usual is more important than an effective program to help the President fight and win a war on terrorism.

We are apparently going to have a cloture vote tomorrow. That cloture vote is going to fail. It is a gimmick and a game being played to try to deny the President the right to have an up-or-down vote on his proposal. Our colleagues who oppose the President have every right under the rules of the Senate to do what they are doing. I am not complaining about it. I am just trying to be sure people understand. If they can invoke cloture, they could put the President's program into a straitjacket where he does not get a straight up-or-down vote, where the first vote will be on this amendment which basically cuts the heart out of the President's program so people who oppose the President never have to vote up or down on the President's program.

Our colleagues who oppose the President have the right to do this. I am not complaining about it. It is completely within the rules of the Senate. But I don't believe under the circumstances it is defensible.

Basically, those of us who support the President are going to resist. We are going to deny cloture, and we are going to continue until the President gets an up-or-down vote.

I don't think this is going to confuse anybody. I know sometime later today and probably in the morning, someone is going to stand up and say: Well, don't the people who support the President want to bring the debate to an end and give the President a vote?

I don't believe people are going to be deceived. It is easy to give the President a vote. All you have to do is to set a time when the President's proposal can be voted on. That is all you have to do.

Under these circumstances, we are not going to let business-as-usual practices in the Senate prevail. We are not going to let the President be denied an up-or-down vote on his proposal.

It may be those who oppose the President will be successful. It may be they can defeat the President. It may be they can pass a bill the President has sworn to veto. It may be they can prevent the President from having a Department of Homeland Security in this Congress. They may do that. But what they cannot do is deny the President a vote.

There was earlier a unanimous consent request propounded concerning allowing a vote on the pending amendment. So no one is confused, I would like to ask unanimous consent that at 11 a.m. on Tuesday, there be an up-or-down vote, yes or no, on the President's program, which is the Gramm-Miller substitute.

Mr. LIEBERMAN. Objection.

The PRESIDING OFFICER. Objection is heard.

The Senator from Texas retains the floor. Has he given up the floor?

Mr. GRAMM. I have spoken beyond my limit of knowledge. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, while the Senator from Texas is on the floor, I want to renew a unanimous consent proposal I made earlier when he was off the floor which would give him the up-or-down vote he wants on the President's proposal. It is highly unusual. He is asking to deprive the Senate of the opportunity to amend. No one is infallible, but to give him the offer.

Madam President, I ask unanimous consent that immediately upon the disposition of Senator NELSON's amendment, Senator GRAMM be recognized to offer a further second-degree amendment, which is the text of the President's proposal as contained in amendment No. 4738, and that the Senate then vote immediately on his amendment.

That should give the Senator from Texas what he wants—an up-or-down vote on the President's proposal.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, Madam President, getting to amend the President's proposal before he gets a chance to have a vote is not giving the President an opportunity for

an up-or-down vote. I have to object, though I will say we are going to have a vote on the President's proposal. Why not set it for 11 o'clock on Tuesday? Let's have the vote. If you can defeat the President, then you will make many special interests in Washington happy. If you cannot, we will have a bill. But at least we will settle the issue.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. So my question back to the Senator from Texas is why deprive the Senator from Nebraska and the Senator from Rhode Island and the Senator from Louisiana the opportunity to have a vote on their amendment?

Mr. GRAMM. If the Senator will yield, I will respond. Madam President, it is obvious to a blind man that there have to be some people on the side of the aisle of the Senator from Connecticut who do not want to vote against the President's homeland security bill, and if you can amend it first with an amendment confusing people as to what you are really doing, then they are off the hook. You all are not doing this because it is fun. Obviously, you have your plan in mind. I have mine.

The PRESIDING OFFICER. Is the Senator from Texas objecting?

Mr. GRAMM. I object.

Mr. LIEBERMAN. Madam President, does the Senator from Texas understand that under the unanimous consent request I have proposed the vote would be on the President's proposal, the Gramm-Miller substitute, unamended, second degree?

Mr. GRAMM. Madam President, I have a lot of problems, but one of them is not not understanding. I understand perfectly that if people could be convinced—there is no sense getting into the details. I think we have overdone it. The President wants an up-or-down vote on his bill, and we are going to hold out for that vote. If you can defeat the President, you have defeated the President. But we want an up-or-down vote, and the way we have things structured in a parliamentary sense, you would have to get cloture on their amendment to vote on it, and you are not going to be able to get it.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I regret the objection of the Senator from Texas, and I fear what it reflects is an understanding that, primarily because of the courage of the Senator from Rhode Island, Mr. CHAFEE, who has created a common ground compromise preserving the President's national security powers and giving some, frankly, minimal due process to homeland security workers, that our friends on the other side do not have the votes anymore because they do not have the votes. They are going to filibuster effectively the adoption of a homeland security bill as amended by the Nelson-Chafee-Breaux amendment.

The Senator from Texas himself has said that 95 percent of his proposal is the same as our underlying committee proposal. The biggest difference between us is with regard to the rights of the homeland security workers and the right of the President to maintain national security powers. This compromise does it. I am disappointed—

Mr. GRAMM. Will the Senator yield so I can agree with him?

Mr. LIEBERMAN.—and I fear the White House is now blocking the early adoption by the Senate of legislation that would create a Department of Homeland Security.

Mr. GRAMM. Will the Senator yield?

Mr. LIEBERMAN. I will, for a question.

Mr. GRAMM. It is true our bills are 95 percent the same. It is like you are giving the President this nice, new, shiny truck, only yours does not have a steering wheel. That is the fundamental difference. There is only 5 percent. It is like the plane that does not have the bolt that holds the tail on. That is the fundamental difference.

Look, we are not holding it up. We are ready to vote. Set the vote for Tuesday. Let's have an up-or-down vote and see where we are.

Mr. LIEBERMAN. Madam President, in responding to the Senator, the vehicle that we would give the President has a great steering wheel. About the only thing that is probably changed is the color of the plastic on the rear lights. The differences, as elucidated in previous debate, are so minimal as to certainly be not worth blocking the creation of a Department of Homeland Security which is urgently needed because the terrorists are still out there.

I see my friend from Nebraska on the floor. He is a lead sponsor of the amendment. He has been waiting a while to speak. I will yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Madam President, the Senator from Texas has made a number of points that I think I will try to respond to as briefly as I possibly can but at the same time respond to the suggestions.

First of all, I am new to this Washington-style posturing and spin doctoring, but I think I am getting the hang of it—maybe slowly, but I am beginning to get the hang of it.

I agree that we are not entitled to our own set of facts. We may have interpretations, we may even have our own thoughts about a set of facts, but we are not entitled to characterize those facts differently just because we choose.

When one looks at a letter or a statement, the statement and/or the letter will speak for itself. I ask unanimous consent to print in the RECORD a letter from Governor Ridge, dated September 5, 2002, to Senator LIEBERMAN in which he says:

... the President seeks for this new Department the same management prerogatives that Congress has provided other departments. . . .

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

THE WHITE HOUSE,  
Washington, September 5, 2002.

Senator JOSEPH I. LIEBERMAN,  
Chairman, Senate Governmental Affairs Committee, U.S. Senate, Washington, DC.

DEAR SENATOR LIEBERMAN: During the past several months you and I have engaged in both public advocacy and private efforts to create a Department of Homeland Security. I have read your article in Tuesday's Washington Post and would like to respond to some of the observations and conclusions. You and I agree that the events of September 11, 2001 tragically underscore the critical need to reorganize a significant portion of the Executive Branch of government and to create a Department whose primary responsibility is securing the homeland. I certainly agree with your observation that never before has there been government "disorganization so consequential and the case for change so compelling."

It is critical to our mutual effort however, to do more than simply realign the many departments and agencies included in the Senate measure under one new Cabinet-level department. This new department must be equipped with the flexibility and agility to respond effectively to threats against this country and to move people and resources in response to those threats. The President has made it clear that the bill as presently written fails to achieve these critical objectives in several ways.

In your article you refer to the President's concerns with your bill as "detours," "secondary" issues, and "unnecessary roadblocks." I am at a loss to understand why the President's insistence that, as Commander-in-Chief, he be the final arbiter of this country's national security interests is a "detour" in this debate. Similarly, I am puzzled as to why his resolve that his new Secretary be given the flexibility to move people and resources in response to terrorist threats is being characterized as a "secondary" issue. In fact these very issues are critical to the success of this new Department.

The Administration believes that the new Secretary must have the freedom to put the right people in the right job, at the right time, and to hold them accountable. He or she must have the freedom to manage and the freedom to reorganize. One of the inescapable truths of this new war on terrorism is that we know that we cannot conduct "business as usual." I was surprised at your assertion that "the president's pleas for additional 'flexibility' would give his administration unprecedented power to undercut the civil service system, rewrite laws by fiat and spend taxpayers' money without congressional checks and balances." This is simply inaccurate. Senator, the President seeks for this new Department the same management prerogatives that Congress has provided other departments and agencies throughout the Executive Branch. For example: budget transfer authority ranging from one to seven percent is granted in various forms to several departments, including the Department of Health and Human Services, the Department of Agriculture, and the Department of Energy; reorganization authority was granted with the establishment of the Department of Energy and Education and government-wide reorganization authority was previously enjoyed by every President until 1984; and, personnel flexibility is currently enjoyed by the Federal Aviation Administration, the Internal Revenue Service, and the Transportation Security Administration.

Furthermore, the new Department of Homeland Security, as well as its new Sec-

retary, will be fully accountable to Congress and subject to especially intensive reporting requirements and Congressional oversight.

Your conclusion that "the President and the Secretary of Homeland Security would, in fact, have more flexibility to run an efficient, effective and performance-driven department than the law now provides" is contrary to the literal language of the bill itself. As written the Senate bill places severe restrictions on the Secretary's ability to manage the Department and fails to provide the authority that the Secretary needs to effectively secure the homeland. Through a variety of separate provisions, the Senate legislation clearly prohibits the new Secretary from reorganizing, reallocating or delegating most of the agency functions in the new Department. It would preclude, for example, even the most basic consolidation of Federal inspectors at our border entry.

Moreover, the idea that "With the powers in existing law and new ones added in our bill, the administration would be able to promptly hire new talent, swiftly move employees around, discipline and fire poor performers" is seriously misleading. While the Senate bill introduces very narrow changes to the personnel system, such modest reforms and corrections are woefully inadequate to meet the President's basic goal of creating a workforce at the Department of Homeland Security with the flexibility, mobility, and agility needed to protect our nation from multiple and constantly changing threats. In fact, the Senate bill leaves in place a 50-year-old, rigid, statutorily mandated, and unalterable personnel system. This kind of organizational rigidity in the face of an agile and aggressive enemy is unacceptable to the Administration.

Your op-ed also mistakenly claims that the Senate bill would allow the President to "remove employees from collective bargaining units when national security is at stake." In fact, the Committee proposal includes language on Federal Labor Relations which would significantly restrict the President's existing, government-wide authority to prohibit collective bargaining for reasons of national security. The bill would in effect deny the President this authority over the Department of Homeland Security—an illogical result given that the President will continue to have the authority for every other department and agency of the Federal government. As every President since Jimmy Carter has shown, there are times where the needs of national security must take precedence over collective bargaining. Each of these Presidents—both Democrats and Republicans—has used this authority precisely and with restraint. It is unfathomable—and again simply unacceptable—that the Senate would choose a time of war to weaken the President's authority to protect national security.

While we continue to have considerable substantive disagreements with the measure presently before the Senate, as you begin the debate to establish the Department of Homeland Security, we must keep in mind the common goal of an accountable, effective agency with the resources and authorities necessary to protect the American people. At the end of the day, we must resolve out differences to reflect our mutual obligation to protect our special interest—America.

With Respect,

GOVERNOR TOM RIDGE,  
Homeland Security Advisor.

Mr. NELSON of Nebraska. Madam President, he points out the Internal Revenue Service, which is exactly what we have included in this amendment, hardly opposing the President unless, Heaven forbid, Director Ridge opposes the President. He suggested it.



Then, Madam President, I do not need to enter—it is already a matter of record—the remarks of the good Senator from Texas in which he suggested that the current situation might be remedied by including the IRS formula that was included in the reorganization of the IRS.

I would not suggest for a minute that he opposes the President.

We have had some explanations or recharacterizations of what these documents mean. The recharacterization does not change the language, does not change the meaning, but now what seems to have changed is the goalposts have been moved, the rules have been changed, and now in good faith we proposed what we thought the White House and others, who were suggesting we ought to do it differently, we thought, what they were asking for.

As with mischaracterizations, I think anybody today watching us would feel as if they have been watching a little bit of "Alice in Wonderland." This is the only place I can imagine where if you have an amendment, you are an opponent of the President. I am not an opponent of the President. I do not oppose the President. I am here trying to find a way to close the gap.

I would like to find the steering wheel for the car of the good Senator from Texas so that it is 100 percent complete, not 95 percent complete, as the example he gave before.

I am intrigued by mischaracterization, but I am not persuaded by it, and nor will my colleagues be persuaded by it as well.

The Senator from Texas referred to page 12 of our amendment and read from it the language he said was now taking away authority of the President. The title is: "Limitation on Exclusionary Authority." He says we are excluding the President's authority. The truth is, this is just a reference to existing law, and it has to have some sort of a heading.

Let's move away from the heading and see what this particular provision does. It says no agency that is transferred to the Department will be excluded from the coverage of chapter 71 of title 5, United States Code 7103(b)(1).

What does that have reference to? The President's authority. It says the agency will not be exempt from the President's authority.

What is that President's authority this has reference to? It says that the President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines the agency or subdivision has as their primary function intelligence, counterintelligence, investigative or national security work, and the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

It also says that the President may issue an order suspending any provision of the chapter or activity if some-

body is located outside of the United States and the District of Columbia. The truth is, this reference incorporates the President's current authority. It does not exclude it. It does not change it. It does not limit it.

What I agree with, which the Senator does point out, is it does then set some additional tests the President ought to apply in making a determination. That is not limiting authority. That is saying these are the tests that ought to be considered and have to be considered before the order is issued. The President has the same authority as before, but now it has a reference to dealing with there being a material change in the responsibility.

The good Senator has also made a suggestion maybe we ought to look at wording that says "or the threats have changed." When the good Senator suggests a change to the existing law, he is not opposing the President, but when we make a suggestion, we are opposing. I think we have to use the same terminology and say we are both trying to improve the existing situation.

If the Senator from Texas makes a suggestion we add language, I am not going to suggest he is opposing the President. I am not even going to suggest he is opposing me. He is trying to make something he disagrees with better, but it does not make us opponents.

What we have heard today is a lot of discussion with a lot of hyperbole and changing the rules as we go along. Of course, I think anybody watching from the outside looking in will not be misled by this kind of spin-doctoring or this kind of labeling.

My hope is we can set aside partisan discussions and talk about the essence of what it is we are about. What we are about is finding a way to close the gap.

I have said to the Senator from Texas, and I say it again, if there is language—and we are looking at his suggestion there—that will make this clearer and stronger, we are very much in favor of considering that. But I do not think it will make either of us opponents of the President if we agree on that language, which is different from the current Gramm-Miller bill that is referred to as the President's bill.

So I think we must, in fact, put aside who is opposing and let us start talking about how we can amend, improve and close the gap so the good Senator's car will have its steering wheel and he can drive forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

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

Mr. NICKLES. Yes.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I had a brief conversation privately with the Senator from Oklahoma, and while the Senator from Texas is in the Chamber, I say we have a vote scheduled for 3:45 this afternoon. It would seem to me the most logical and sensible thing to do, since we have

been told by several people on the other side of the aisle we are not going to get cloture tomorrow when we vote an hour after we come in, instead of having the vote at 3:45 on the cloture that is now set we should have it on the amendment the Senator from Texas said we will not get cloture on, which makes more sense.

If we are not going to get it tomorrow, it would seem it would be in everyone's best interest, with all the things going on in Washington tomorrow, we have the vote today and allow people who are concerned about some of the things that might take place tomorrow in the District to be able to go to their home in the suburbs or in the District or back to the States.

If the Senator is right that we will not get cloture—and if, in fact, we did get cloture, it would allow a lot of people not to be here because the 30 hours runs and, of course, we have one hour at a pop. I am not going to formally ask at this time, but I ask the distinguished Republican assistant leader to see what he could do about working that out. It seems to me it would be in the best interest of the Senate and it would be in the best interest of those we are trying to work to some finality in this bill.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I will be happy to work with him on trying to schedule things that are convenient for all colleagues.

I rise today to make a few comments I really wish I did not have to make. Yesterday, the majority leader of the Senate made a very strong, impassioned speech. I missed most of it, but I caught a lot of it last night on "Nightline." I caught a transcript of it and then I saw it again. I will read part of it. Senator DASCHLE said: I can't believe any President or 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—the Democratic-controlled Senate is not interested in the security of the American people.

Senator DASCHLE was reading from The Washington Post. Unfortunately, though, he did not quote The Washington Post correctly and he certainly did not quote the President of the United States correctly.

It is a very strong accusation saying the President of the United States would politicize the war and he quotes the President of the United States, but he quoted the President of the United States inaccurately.

One, we should keep politics off the floor of the Senate, particularly when we are talking about issues of very significant importance such as war, war resolutions, or a resolution dealing with Iraq, which has been a troublesome spot for the United States. We have had several debates and discussions on Iraq. We should not be playing

partisan politics. I do not think we should be attacking the President of the United States on a quote in the Washington Post, which may or may not be accurate. The way it was stated by Senator DASCHLE was inaccurate, and I will read the President's quote from the Washington Post which was alluded to, and then I will again read Senator DASCHLE's quote and we will see directly they are not the same.

What the President said when he was in New Jersey on September 24 was:

So I asked the Congress to give me the flexibility necessary to be able to deal with the true threats of the 21st century by being able to move the right people to the right place at the right time, so we can better assure America we're doing everything possible. The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people. I will not accept a Department of Homeland Security that does not allow this President, and future Presidents, to better keep the American people secure.

The President goes on to say:

And people are working hard in Washington to get it right in Washington, both Republicans and Democrats. See, this isn't a partisan issue. This is an American issue. This is an issue which is vital to our future. It'll help us determine how secure we'll be. Senator GRAMM, a Republican, Senator MILLER, a Democrat, are working hard to bring people together. And the Senate must listen to them.

That is what the President said, and to take out of that a statement that says the Democratic-controlled Senate is not interested in the security of the American people, is not what the President said. If someone is making a statement that receives a lot of attention, there must have been notification to the press this is going to be a very important statement, and to make a statement misquoting the President of the United States on an issue like this and accuse him of politicizing the war, when the issue was homeland security, I think is a real injustice to the President of the United States and to the quality and flavor of debate we should be having in the Senate.

We should not be politicizing a debate dealing with war and talking about international repercussions. And there are repercussions when we make speeches, particularly when the Democrat leader makes a speech. I cannot help but think the headlines that came out as a result of his speech brought about some comfort for those who really oppose the United States policies or those who are opposed to formulating an international coalition the administration is presently trying to put together in the United Nations, in Europe, and in the Middle East.

This President, like his father, was trying to build an international coalition. I can't help but think when they read that the Democrat leader of the Senate is accusing the President of politicizing the war and misquoting the President, that gives them a lot of ammo. That gives them a lot of justification for Saddam Hussein or others

to say: See, I told you they are just politicizing this war. They want to do this for political purposes, when that was not what the President said.

Again, when I first heard of this I thought, well, let me find out what the President said. I am a friend of the President's. I am willing to defend him, but I wanted to see what he had to say. I know the President very well and I said, I can't believe he would say Senate Democrats are not concerned about national security because that is not factual.

But then when I read these comments, not only did he not say it, he didn't say anything close to it. Then in the next sentence down he said:

And people are working hard in Washington to get it right in Washington, both Republicans and Democrats.

I wish Senator DASCHLE would have read that. I wish he would have read that he compliments both Senator GRAMM, a Republican, and Senator MILLER, a Democrat, and he never once said what was said on the floor yesterday. He never once said Senate Democrats are not interested in national security. He didn't say it. But that was the attack that was made yesterday.

I just think of the international repercussions, and I am thinking of this enormous challenge to build an international coalition, one that President Bush 1 was able to do in 1990 and 1991, an enormous coalition, but it was not easy to build. It is a coalition, I might mention, that was put together, and very successfully, in 1991, that dissipated over the next 8 years and is now gone. So President Bush, this President Bush at the present time, is trying to rebuild the coalition. Then to be attacked by the majority leader, misquoting him, I think is very inappropriate.

I also wish to make a comment about Vice President Gore.

Before I do that, I want to read another. The President made two speeches. I scanned both. I didn't want to misstate what the President said. I like to be factually accurate. If I ever misquote anybody, it will be a mistake.

So I read the President's speech that he made at another event. This goes to the same subject. I believe this was made on September 25th.

Right now in the Senate the Senate feels like they want to micromanage the process, not all Senators but some Senators. They feel they have to have a pile of books this thick that will hamstring future administrations how to protect our homeland. I am not going to stand for it.

I appreciate John's vote on a good homeland security bill. And the Senate must hear this, because the American people understand it. They should not respond to special interests—they ought to respond to this interest: protecting the American people from a future attack.

Again, he didn't say anything about the Democrat Senate not supporting national security.

But there was a real political statement made the other day. That was by former Vice President Al Gore. Again,

I would like to think that Presidents and former Presidents and former Vice Presidents wouldn't undercut the existing President and Vice President on the floor—while they are trying to build coalitions. That is exactly what the former Vice President did. Former Vice President Gore, in speaking to, a group of Democrats or a group of people in San Francisco, had a lot of outlandish things to say.

I read—well, he is trying to garner support from the political left or right, and I guess he has that right to do so. But I would think he would have the dignity to try to maintain the dignity of the Office of Vice President and not undermine an existing administration that has a difficult challenge to try to rebuild a coalition. This is one of the things Vice President Gore said on September 23:

To begin with, to put things first, I believe we ought to be focusing on efforts first and foremost against those who attacked us on September 11 and who have thus far gotten away with it.

For Vice President Gore to say that is grossly irresponsible, and is very inconsistent, I might say, with some of the things he had to say in the past.

It is very troubling to me, when I look at the previous administration and what they did or didn't do in response to previous acts of terrorism, for him to be blaming this administration for not being aggressive enough in fighting the war on terrorism, and I see terrorist attacks that happened during Vice President Gore's administration, President Clinton's administration, and I look at the response they had against terrorism and I say, Where is it?

For him to be critical of this President when this President has made an aggressive effort to combat terrorism and basically eliminating it—going into Afghanistan, helped in liberating the Afghan people, dispersing al-Qaida, going after and rounding up and killing hundreds of terrorists—for the Vice President to be critical of this administration is mind-boggling.

I remember when the U.S. Embassies were bombed in Kenya and Tanzania on August 7, 1998; 224 people were killed, including 12 Americans, almost all of those were employees of the United States. Five thousand people were wounded.

And what did we do? Well, we lobbed a few cruise missiles hoping maybe we would get Bin Laden and then we didn't do anything else. That was in August of 1998. Yet we didn't do anything, after that for the next couple of years; the previous administration did nothing.

And then the U.S.S. *Cole* was attacked on October 12, the year 2000; 17 U.S. sailors were killed; 39 were wounded. The entire ship could have sunk.

What did we do? Nothing.

President Clinton said:

If, as it now appears this was an act of terrorism, it was a despicable and cowardly act. We will find out who was responsible and

hold them accountable. If their intention was to deter us from our mission in promoting peace and security in the Middle East, they will fail utterly.

President Clinton, as a result of the bombings of the U.S. Embassies, on August 7 of 1998 said:

These acts of terrorist violence are abhorrent. They are inhuman. We will use all the means at our disposal to bring those responsible to justice no matter what or how long it takes.

That was President Clinton's remarks, and I would assume Vice President Gore would agree with those remarks, but we didn't do anything. And we didn't follow up. We did lob a few cruise missiles, but we didn't stay after Bin Laden. We could have. We could have sent some special forces. We could have sent some airplanes over there. We could have been very aggressive in trying to hunt down the people who killed hundreds of people in those two attacks, but we didn't do it. We flat didn't do it. As a result, some of the people who planned those two activities also planned and carried out the airplane bombings in the World Trade Center and the Pentagon and in the fields of Pennsylvania—probably headed towards the Capitol—because we didn't follow up. We didn't pursue them as aggressively as we should have in 1998, 1999, 2000.

Then to have the former Vice President be critical of this administration, that has moved aggressively to combat terrorism and go after the terrorism—I am very troubled by that. Very troubled by it, indeed. We are all entitled to our opinions. We are all entitled to state what we think should be done. But I happen to be one who believes that when you are in a war, you should be working together and not try to undermine the President of the United States.

I am afraid, as a result of both the comments that were made by the majority leader and the comments that were made by the former Vice President, I think it does undermine our united efforts to combat terrorism and to go after those people who are directly responsible.

Finally, I want to make a couple of other comments. In dealing with the bill we have before us, Senator GRAMM has mentioned that he has an amendment, supported by the President, endorsed by Senator MILLER. I compliment them for their work on this issue. Unfortunately, the amendment tree is filled. I don't want to get too bogged down in the parliamentary jargon, but I am looking at this tree. I want to read a quote Senator DASCHLE once said in June. He said:

I announced at the very beginning of my tenure as majority leader I will never fill the tree to preclude amendments. I am going to hold to that promise.

That was made on June 10. I happen to be one who doesn't like filling the tree, either. But this tree is filled and why is it filled? It is to deny people a vote, the Senator from Texas and Georgia

having a right to a vote on their amendments next. They want to obscure it so we vote on other amendments first.

Then the issue of cloture—we are going to have a vote tonight or we are going to have a vote tomorrow. Well, the purpose of cloture is to deny them the vote and it is to falsely allude to—maybe people on this side of the aisle are filling the tree, which is false. We are not filibustering the Interior bill.

I said that several times, and I happen to consider myself a person of my word. I will let you know if I am filibustering a bill. The Senator from Nevada knows me pretty well. I will let him know if I am filibustering a bill. He will know it. No one is filibustering this bill. Well, "We are going to file cloture." They know they have to get 60 votes for cloture. They won't have it today and they won't have it tomorrow.

The Senators from Texas and Georgia introduced the President's package. It has been modified to accommodate a lot of Senators and to make sure we don't have anything that would be intrusive against public employees. It has a lot of protections in it. It is a well-thought-out amendment and is very similar to many of the adoptions made in the House of Representatives. They are entitled to their vote. Will cloture deny them that opportunity? This amendment would not be germane postcloture. It would fall.

I have said repeatedly that they are entitled to their vote, and they are going to get their vote.

I urge my colleagues, we could do a lot better in legislating if we didn't fill trees, if we didn't file cloture every other day, and if we worked together to come up with a reasonable alternative to allow people to vote on this alternative, to vote on the Gramm-Miller alternative, to vote on other alternatives and be finished with the bill.

The same thing with the Interior bill—if we had a vote on the various proposals dealing with fire. Let us vote. That is what we are paid to do. Let us vote. I urge my colleagues, let us not use the floor of the Senate to be accusing this President of politicizing the war; the Vice President as well. I think that undermines the Senate and is not worthy of debate in the Senate.

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

Mr. NICKLES. I would be happy to yield.

Mr. BYRD. I just want to say this: I agree with what the Senator said in respect to the appropriations bills. We had this talk—those of us who agreed on appropriations bills. He is ready to vote on them. So am I.

I hope the leadership will attempt to get some of the other appropriations bills up. Let us see who is holding up appropriations bills. We have to do the Health and Human Services bill. We have that. We have all of these bills backed up, and not a single one of the 13 appropriations bills has been sent to the Senate.

I thank the Senator for making that point. He is ready. Let us vote on those bills.

Mr. NICKLES. I appreciate the chairman of the Appropriations Committee. I do know that when we have appropriations we have disputes on amendments. The way to dispose of those amendments is not to file cloture because it won't work. The way to dispose of those amendments is to, if you do not like it, move to table it, or accept it. Maybe you accept it, or drop it. But you deal with the amendment.

I am embarrassed that we have been on two bills for 4 weeks and we have made so little progress. We have spent the entire month of September, and the end of the fiscal year is next month, and we haven't passed one appropriations bill this month—not one. We have only had three or four votes on each bill—both the Interior bill and the homeland security bill. That is pretty pathetic progress.

As a result, we have only passed three appropriations bills out of the Senate. It is maybe one of the worst records we have had in a long time. That is not acceptable.

I can't help but think if the majority or minority would get together and say let us bring up these bills, move them quickly; let us table nongermane amendments; let us get our work done; that it would help make the process work a lot better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I, as every Senator who serves here, came to the Senate for the purpose of being a public servant and to try to do things that help our respective States and the country. That is why we are here. People at home, in many instances, are somewhat jaundiced of the process. They think things we do here are political in nature and in the negative sense, and that we are really not here for the good of the country. I don't want to believe that. But there were times when even I became suspect about what is going on here.

TOM DASCHLE, the majority leader of the Senate, came to the floor twice yesterday. He was concerned because blazed across the country in the newspapers is something that has not been said once, but during the last month the President of the United States has said on six different occasions—four times at fundraisers—that the Senate—specifically on occasion Senate Democrats—weren't concerned about national security.

Mr. NICKLES. Will the Senator yield?

Mr. REID. I yield for a question.

Mr. NICKLES. I just want to correct the record and say I have scrutinized the President's speech. And I have never seen where this quote—I just gave it to the clerk—this quote comes from Monday. I looked at the President's speech. I have the President's speech. I will enter it into the RECORD.

But it did not say the Democratic-controlled Senate is not interested in the security of the people.

Again, we have to be factually accurate. If we are going to quote the President of the United States and accuse him of politicizing the war, let us have an accurate quote. You can't take only part of a newspaper, the part that says the Democrat Senate—I guess what was not in quotes. But it was read on the floor like it was quotes; like it was a direct quote from the President. The President did not say that. Even the Washington Post didn't say it. You can't say, well, the Washington Post had it wrong; that the Washington Post inferred that he meant the Democrat Senate. But that is not what he said.

When it is something of this significance, when it has international repercussions, and when it can undermine our efforts in trying to get countries such as Egypt, Jordan, Germany, Italy, and others to be on our side; to say the President said the Democratic-controlled Senate is not interested in national security, when he didn't say it, is a real injustice.

Mr. REID. Folks listen. Listen. Six times within the past month—four times at fundraisers—the President said the same thing.

When the majority leader came to the floor, he said a number of things.

First of all, he quoted correctly that at a fundraiser, Dowd, one of the Republican pollsters, was quoted, and I quote:

Number-one driver for our base motivationally is this war.

Then, of course, we go to Karl Rove. Karl Rove, prior to the President being elected, no one knew who he was. We in Nevada knew him because he is from Nevada. But now everybody knows Karl Rove because he is known as the President's closest confidant. Of course, in June a floppy disk was found at Lafayette Park, right across from the White House. No one has denied that Karl Rove said what was on this floppy disk. Basically, it said focus on the war. There is the key point that should be centered on White House desire to maintain a positive issue environment. That positive issue environment is focus on the war and not on the stumbling economy.

Then we go to Andrew Card. Andrew Card said from a marketing point of view, you don't introduce new products in August.

Then we have the Vice President, and then we have the President. OK. Now.

Mr. NICKLES. Will the Senator yield?

Mr. REID. No. I will not.

Today, the Republican National Committee—of course, who leads the Republican National Committee? It is the President of the United States. Just like when we have a Democratic President, he is the leader of the Democratic National Committee. We have e-mail now. For some people, e-mail is not what we are used to. But we have e-mail. Who was this e-mail sent to? It

was sent to GOP team leaders. And it also gives you information if you want to become a GOP team leader. Who do you get to become one? We know how. Money.

What does this say? Maybe this is what this is all about—fundraising; seeing if they can raise some more money for the midterm elections.

Tell Your Senators to support President Bush's Homeland Security. Democrat Senators Put Special Interests Over Security.

Among other things, this said the Senate is more interested in special interests in Washington and not the security of the American people.

It goes on to say.

This bipartisan approach is stalled in the Senate because some Senate Democrats have chosen to put special interest, Federal Government employee unions, over the security of the American people.

Mr. NICKLES. Will the Senator yield?

Mr. REID. I will not yield until I finish. Just be patient.

Madam President, this is what it is all about—raising money for the midterm elections and accusing me of being not for the interests of this Nation.

I was the first Democrat to publicly support this President's father. I came to this floor right here—first Democrat—to say go to Iraq and do what you have to do. And to accuse me of not being for the Nation's security—as Senator DASCHLE pointed out, back here is a man who is missing an arm that was blown off when he was in the Second World War. As he said, he was a very young man. MAX CLELAND came in. He has one arm. He is missing both legs and an arm. He is not for the security of this Nation?

Talk to FRITZ HOLLINGS, a man nearly 80 years old, who was in World War II as an officer and fought in combat.

DANNY AKAKA. Now, most of us here don't have Congressional Medals of Honor like DAN INOUE has. And let us not forget JOHN KERRY and TOM CARPER. But vicariously I have served in the Senate and the House of Representatives trying to do what I could to have this a secure nation. And to have anyone accuse me of not being for a secure nation is accusing me of not being patriotic. That is not right.

They can accuse me of being too liberal on an issue, too conservative on an issue, being a big spender, not spending enough, but don't accuse me—I didn't come back here to be called names. That is what I am being called.

Now, you can criticize TOM DASCHLE all you want, but, remember, the American people know he is right. You can't do what has been done.

We want to pass homeland security. This is a good man, Senator LIEBERMAN. He is one of the most conservative people we have in the Democratic caucus. He started working on this bill before September 11. Does he not want this bill? Of course he wants this bill.

We are being told we can't have cloture. Why did we file cloture? Because

for 4 weeks we have been trying to pass a bill for this President, whose chairman of the Republican National Committee is sending out this trash.

So I think we should debate the issues. I am proud of TOM DASCHLE for standing up and bringing attention to what is going on.

What is going on? That the No. 1 driver for the Republicans is the war. It should not be.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I will just repeat to my colleague, you may find a quote from the RNC, and I am sure we could find things from the Democratic National Committee to be quite partisan. What I stated was that the President did not state what was alluded to yesterday on the floor when the majority leader said that, quote: the Democratic Senate is not interested in the security of the American people.

That is what he said. I am just saying, quite frankly, the President of the United States did not say it. I reviewed the entire speech.

I ask unanimous consent to have that speech printed in the RECORD.

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

PRESIDENT CALLS ON CONGRESS TO ACT  
Army National Guard Aviation Support Facility, Trenton, NJ, September 23, 2002

The President: Thanks a lot for coming out this morning. It is my honor to be—it is my honor to be back in New Jersey. I want to thank you all for coming out. I want to thank the people of the New Jersey Army and Air National Guard for your hospitality. (Applause.) I'm here to talk about how best to make America a stronger country, a safer country, and a better country for all of us.

There is an old bridge over the Delaware River that says: Trenton makes, the world takes. (Applause.) It talks about the work ethic of the people of this part of our country, it talks about the creativity, it talks about the true strength of America. The true strength of America are our fellow citizens. The strength of our country is the people of America. And I'm honored to be with such hardworking people. (Applause.)

Congress can help. Congress needs to work hard before they go home. Congress needs to get some things done, which means a homeland security department, a budget that reflects our priorities. They've got to make sure they don't overspend your money. They've got to remember, everything they do must go to make sure America is a stronger and safer and better place. (Applause.)

I want to thank Brigadier General Glenn Rieth for opening up this hangar and for inviting me to this base. I want to thank all the Guard personnel who serve the United States of America. I want to thank you for your service, I want to thank you for your sacrifice. (Applause.) I want to thank your governor for being here today. I appreciate Governor McGreevey being at the steps of Air Force One. I'm thankful for his hospitality. I appreciate him coming to say, hello, and I'm honored he's here today to hear this speech. Governor, thank you for coming.

I appreciate members of the congressional delegation. Congressmen Ferguson, Saxton and Smith from New Jersey, thank you all

for being here. (Applause.) I want to thank Bob Prunetti who is the Mercer County Executive, for greeting me here, as well. And I want to thank you all for coming.

Here's what's on my mind: I want our people to work here in America. Any time somebody who wants to work can't find a job, it means we've got a problem in this country. And we will not rest until people can find work. A stronger America means a strong economy. A stronger country means that our good, hardworking Americans are able to put food on the table for their families.

Now, we're making progress. Listen, interest rates are low, inflation is low, we've got the best workers in the world. We've got the best, hardest workers and smartest workers in the world. We've got the ingredients for growth. But what has taken place so far is not good enough for me. And I hope it's not good enough for the Congress. What's happening in the economy is not good enough for a stronger America. And Congress can help.

Listen, I come from the school of thought that says, if you've got an economic problem—and remember, for the first three quarters of my administration we were in negative growth; the stock market started to decline in March of 2000; economic growth started to show down in the summer of 2000; we were in recession in the first three quarters of 2001.

In order to make sure the country was stronger, I pulled this page out of the economic textbook, the page that says, if you let people keep more of their own money, they're going to spend it on a good or a service. If they spend it on a good or a service, somebody will produce the good and service. And if somebody produces a good or service, some American is more likely to find work. The tax relief came right at the right time for economic growth and jobs. (Applause.)

And if Congress wants to help in job creation, they need to make the tax relief permanent. They need to make the tax relief permanent so our New Jersey small businesses and entrepreneurs can plan for the future. After all, most growth of new jobs comes from small businesses all across America.

Congress also must understand they've got to pass an energy bill. You see, an energy bill will be good for jobs. An energy bill will be good for national security. We need an energy bill that encourages consumption [sic], encourages new technologies so our cars are cleaner, encourages new renewable energy sources, but at the same time encourages increase of supply here at home, so we're less dependent on foreign sources of crude oil. (Applause.)

Congress needs to get some work done before they go home. And one of the most important things they can do is to pass an anti-terrorism insurance bill. See, we need an insurance bill to cover potential terrorist acts, so that hard hats in America can get back to work. And I want a bill on my desk that says we care more about the working people and less about the trial lawyers. We want a bill that puts the hard hats back to work, not enriches the trial lawyers here in America. (Applause.)

In order to make sure our country is stronger and our economy grows, Congress must be wise with your money. Notice I said "your money." When it comes time to budgeting and appropriations, which means spending, sometimes in Washington they forget whose money they're talking about. You hear them talking about the government's money. No, the money in Washington is not the government's money, the money in Washington is your money. And we better be careful about how we spend your money. And if Congress overspends, it's going to a prob-

lem for making America's economy continue to grow. And so my message to Congress is: remember whose money you're spending.

Now, one of the problems we have is that any time you're worried about spending, you set a budget. That's what you do. The Senate hasn't been able to do so. They don't have a budget, which means it's likely they're going to overspend. See, every idea in Washington is a good idea. Everybody's idea sounds good, except the price tag is generally in the billions. In order to make sure the country is stronger, we need fiscal responsibility in Washington, D.C. We need to make sure that Congress does not overspend. Without a budget, they're likely to overspend.

They set deadlines on you, when it come to paying our IRS, paying your taxes. There ought to be a deadline on them in order to get a budget passed and to get bills passed. Now, because they haven't been able to move, they're going to send my desk soon what looks like what they call a temporary spending bill. And that temporary spending bill should not be an excuse for excessive federal spending. The temporary spending bill ought to remember whose money they're spending. A temporary spending bill ought to be clean, so that we don't overspend as the economy is trying to continue to grow. What we need in Washington is fiscal responsibility, fiscal sanity. We need to set priorities with your money. And the most important priority I have is to defend the homeland; is to defend the homeland from a bunch of killers who hate America. (Applause.)

It's very important for the school children here to listen to what I'm about to say. You're probably wondering why America is under attack. And you need to know why. We're under attack because we love freedom, is why we're under attack. And our enemy hates freedom. They hate and we love. They hate the thought that this country is a country in which people from all walks of life can worship an almighty God any way he or she fits. They hate the thought that we have honest and open discourse. They hate the thought that we're a beacon of liberty and freedom.

We differ from our enemy because we love. We not only love our freedoms and love our values, we love life, itself. In America, everybody matters, everybody counts, every human life is a life of dignity. And that's not the way our enemy thinks. Our enemy hates innocent life; they're willing to kill in the name of a great religion. (Applause.) And as long as we love freedom and love liberty and value every human life, they're going to try to hurt us. And so our most important job is to defend the freedom, defend the homeland—is to make sure what happened on September the 11th doesn't happen again, we must do everything we can—everything in our power—to keep America safe.

There are a lot of good people working hard to keep you safe. There are people at the federal level and at the state level, a lot of fine folks here at the local level, doing everything we can to run down every lead. If we find any kind of hint, we're moving on it—all within the confines and all within the structure of the United States Constitution. We're chasing down every possible lead because we understand there's an enemy out there which hates America.

I asked the Congress to work with me to come up with a new Department of Homeland Security, to make sure that not only can this administration function better, but future administrations will be able to deal with the true threats we face as we get into the 21st century. A homeland security department which takes over the hundred different agencies and brings them under one umbrella so that there's a single priority and a new culture, all aimed at dealing with the threats.

I mean, after all, on our border we need to know who's coming into America, what they're bringing into America, are they leaving when they're supposed to be leaving America. (Applause.) Yet, when you look at the border, there are three different federal agencies dealing with the border: there is Customs and INS and Border Patrol. And sometimes they work together and sometimes they don't—they don't. They've got different work rules. They've got different customs. Sometimes they have different strategies. And that's not right.

So I asked Congress to give me the flexibility necessary to be able to deal with the true threats of the 21st century by being able to move the right people to the right place at the right time, so we can better assure America we're doing everything possible. The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people. I will not accept a Department of Homeland Security that does not allow this President, and future Presidents, to better keep the American people secure. (Applause.)

And people are working hard in Washington to get it right in Washington, both Republicans and Democrats. See, this isn't a partisan issue, this is an American issue. This is an issue which is vital to our future. It'll help us determine how secure we'll be.

Senator Gramm, a Republican, Senator Miller, a Democrat, are working hard to bring people together. And the Senate must listen to them. It's a good bill. It's a bill I can accept. It's a bill that will make America more secure. And anything less than that is a bill which I will not accept, it's a bill which I will not saddle this administration and future administrations with allowing the United States Senate to micro-manage the process. The enemy is too quick for that. We must be flexible, we must be strong, we must be ready to take the enemy on anywhere he decides to hit us, whether it's America or anywhere else in the globe. (Applause.)

But the best way to secure our homeland, the only sure way to make sure our children are free and our children's children are free, is to hunt the killers down, wherever they hide, is to hunt them down, one by one, and bring them to justice. (Applause.)

As far as I'm concerned, it doesn't matter how long it takes. See, we're talking about our freedom and our future. There's no cave deep enough, as far as I'm concerned; and there's no cave deep enough, as far as the United States military is concerned, either. I want you all to know, if you wear the uniform of our great country, I'm proud of you. I've got confidence in you. I believe that you can handle any mission. (Applause.)

No, it's a different kind of war than our nation has seen in the past. One thing that's different is oceans no longer keep us safe. The second thing is, in the old days, you could measure progress by looking at how many tanks the enemy had one day, and how many he had the next day, whether or not his airplanes were flying or whether or not his ships were floating on the seas. It's a different kind of war. And America has begun to adjust its thinking about this kind of war.

See, this is the kind of war where the leaders of the enemy hide. They go into big cities—or as I mentioned, caves—and they send youngsters to their suicidal death. That's the kind of war we're having. It's not measured in equipment destroyed, it's going to be measured in people brought to justice. And we're making progress. I had made it clear to the world that either you're with us or you're with the enemy, and that doctrine still stands. (Applause.) And as a result of the hard work by our United States military and the militaries and law enforcement officers of other countries, we've arrested or

brought to justice a couple thousand or more. Slowly but surely, we're finding them where we think they can hide.

We brought one of them in the other day. He thought he was going to be the 20th hijacker, or at least he was bragging that way. I don't know if he's bragging now. But, see, he thought he was immune, he thought he was invisible, he thought he could hide from the long arm of justice. And like many—about the like number haven't been so lucky as the 20th hijacker. They met their fate.

We're getting them on the run, and we're keeping them on the run. They're going to be—as part of our doctrine, we're going to make sure that there's no place for them to alight, no place for them to hide. These are haters, and they're killers. And we owe it to the American people and we owe it to our friends and allies to pursue them, no matter where they try to hide.

And that's why I asked the Congress for the largest increase in defense spending since Ronald Reagan was the President. I did so because I firmly believe that any time we commit our troops into harm's way, you deserve the best pay, the best training and the best possible equipment. (Applause.) I also asked for a large increase because I wanted to send a clear signal to the rest of the world that we're in this for the long haul; that there is no calendar on my desk that says, by such and such a day we're going to quit, that by such and such a day we will all have grown weary, we're too tired, and therefore we're coming home.

That's not the way we think in America. See, we understand obligation and responsibility. We have a responsibility to our children to fight for freedom. We have a responsibility to our citizens to defend the homeland. And that only means—not only means dealing with real, immediate threats, it also means anticipating threats before they occur, before things happen. It means we've got to look out into the future and understand the new world in which we live and deal with threats before it's too late.

And that's why I went into the United Nations the other day. And I said to the United Nations, we have a true threat that faces America; a threat that faces the world; and a threat which diminishes your capacity. And I'm talking about Iraq. That country has got a leader which has attacked two nations in the neighborhood; a leader who has killed thousands of people; a leader who is brutal—see, remember, we believe every life matters and every life is precious—a leader, if there is dissent, will kill the dissenter; a leader who told the United Nations and the world he would not develop weapons of mass destruction, and for 11 long years has stiffed the world.

He looked at the United Nations and said this is a paper tiger, their resolutions mean nothing. For 11 years he has deceived and denied. For 11 years he's claimed he has had no weapons and, yet, we know he has.

So I went to the United Nations and said, either you can become the League of Nations, either you can become an organization which is nothing but a debating society—or you can be an organization which is robust enough and strong enough to help keep the peace; your choice.

But I also told them that if they would not act, if they would not deal with this true threat we face in America, if they would not recognize that America is no longer protected by oceans and that this man is the man who would use weapons of mass destruction at the drop of a hat, a man who would be willing to team up with terrorist organizations with weapons of mass destruction to threaten America and our allies, if they wouldn't act, the United States will—we will not allow the world's worst leaders to

threaten us with the world's worst weapons. (Applause.)

I want to see strong resolutions coming out of that U.N.; a resolution which says the old ways of deceit are gone; a resolution which will hold this man to account; a resolution which will allow freedom-loving countries to disarm Saddam Hussein before he threatens his neighborhood, before he threatens freedom, before he threatens America and before he threatens civilization. We owe it to our children and we owe it to our grandchildren to keep this nation strong and free. (Applause.)

And as we work to make America a stronger place and a safer place, we always must remember that we've got to work to make America a better place, too—a better place. And that starts with making sure every single child in America gets a great education. (Applause.) Make sure that every child—make sure that we focus on each child, every child. It says we expect and believe our children can learn to read and write and add and subtract. As a society, we will challenge the soft bigotry of low expectations.

We believe every child can learn, every child matters, and therefore we expect to be told whether or not the children are learning to read and write and add and subtract. And if we find they're not, if we find there are certain children who aren't learning and the systems are just shuffling through as if they don't matter, we must challenge the status quo. Failure is unacceptable in America. Every child matters, and no child should be left behind in this great country. (Applause.)

A better America, a better America is one which makes sure that our health care systems are responsive to the patient and make sure our health care systems, particularly for the elderly, are modern. We need prescription drug benefits for elderly Americans. The Medicare system must be reformed, must be made to work so that we have a better tomorrow for all citizens in this country. (Applause.)

A better America is one that understands as we're helping people go from dependency to freedom, from welfare, we must help them find work. A better America understands that when people work, there is dignity in their lives. A better America is America which understands the power of our faith-based institutions in our country. It's in our churches and synagogues and mosques that we find universal love and universal compassion. (Applause.)

You now what's really interesting about what's taking place in America is this: the enemy hit us, but out of the evil done to America is going to come some incredible good, because of the nature of our soul, the nature of our being. On the one hand, I believe we can achieve peace. Oh, I know the kids hear all the war rhetoric and tough talk, and that's necessary to send a message to friend and foe alike that we're plenty tough, if you rouse this country, and we're not going to relent.

But we're not going to relent because my desire is to achieve peace. I want there to be a peaceful world. I want children all across our globe to grow up in a peaceful society. Oh, I know the hurdles are going to be high to achieving that peace. There's going to be some tough decisions to make, some tough action for some to take. But it's all aimed at making America safe and secure and peaceful, but other places around the world, too. I believe this—I believe that if our country—and it will—remains strong and tough and we fight terror wherever terror exists, that we can achieve peace. We can achieve peace in the Middle East, we can achieve peace in South Asia. We can achieve peace.

No, out of the evil done to America can come a peaceful world. And at home, out of

the evil done to our country can come some incredible good, as well. We've got to understand, in America there are pockets of despair and hopelessness, places where people hurt because they're not sure if America is meant for them, places where people are addicted. And government can help eradicate these pockets by handing out money. But what government cannot do is put hope in people's hearts or a sense of purpose in people's lives. That's done when neighbor loves neighbor. That's done when this country hears the universal call to love a neighbor just like you'd like to be loved yourself.

No, out of the evil done to America is coming some incredible good, because we've got citizens all across this land—whether they be a part of our faith-based institutions or charitable institutions—citizens all across this land who have heard the call that if you want to fight evil, do some good. If you want to resist the evil done to America, love your neighbor; mentor a child; put your arm around an elderly citizen who is shut-in, and say, I love you; start a Boy Scout or Girl Scout troop; go to your Boys and Girls Clubs; help somebody in need.

No, this country, this country has heard the call. This country is a country full of such incredibly decent and warm-hearted and compassionate citizens that there's people all across New Jersey and all across America who without one government act, without government law are in fact trying to make the communities in which they live a more responsive and compassionate and loving place.

Today I met Bob and Chris Morgan, USA Freedom Corps greeters, who coordinate blood drives right here in New Jersey for the American Red Cross. Nobody told them they had to do that. There wasn't a law that said, you will be a part of collecting blood. They decided to do it because they want to make America more able to address emergency and help people in need. Whether it's teaching a child to read, whether it's delivering food to the hungry or helping those who need a—housing, you can make a huge difference in the lives of our fellow Americans.

See, societies change one heart, one conscience, one soul at a time. Everybody has worth and everybody matters. No, out of the evil done to America is going to come a compassionate society. (Applause.) Now this great country will show the world what we're made out of. This great country, by responding to the challenges we face will leave behind a legacy of sacrifice, a legacy of compassion, a legacy of peace, a legacy of decency for future generations of people fortunate enough to be called an American.

There's no question in my mind—I hope you can tell, I'm an optimistic fellow about our future. I believe we can overcome any difficulty that's put in our path. I believe we can cross any hurdle, climb any mountain, because this is the greatest nation on the face of the earth, full of the most decent, hardworking, honorable citizens.

May God bless you all, and may God bless America. Thank you, all. (Applause.)

Mr. NICKLES. I read the speech.

Read the next paragraph. I have read the one paragraph. Read the next paragraph. The Senator from West Virginia will be interested in this. I will read the two relevant paragraphs again:

The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people.

He didn't say the Democrats in the Senate. He didn't say what was stated on the floor. Let's be factual. Let's be honest. Let's say exactly what was



said. Let's not construe and say something else.

Let me go on. The President said:

I will not accept a Department of Homeland Security that does not allow this President, and future Presidents, to better keep the American people secure.

And people are working hard in Washington to get it right in Washington, both Republicans and Democrats.

That is in the President's speech. That doesn't sound very partisan to me.

See—

This is again the President:

See, this isn't a partisan issue. This is an American issue. This is an issue which is vital to our future. It'll help us determine how secure we'll be.

Senator GRAMM, a Republican, Senator MILLER, a Democrat, are working hard to bring people together.

That is not a partisan speech. That is not flailing all Senate Democrats. That is not accusing all Senate Democrats as being unpatriotic. Quite far from it.

So to stand on the floor and say, well, the President said that six times in the last few days, I don't believe is factually accurate. And to send signals to our allies and our adversaries that this is politicizing the war, or that some people think we might be, is politicizing the war, and it is wrong. And it sends the wrong signal. It sends all kinds of wrong signals, and it shouldn't be done.

If you are going to quote the President of the United States, not his election committee, not some mysterious tape that shows up someplace, but if you are going to quote the President of the United States, you ought to quote him accurately. And that was not done. And it is probably one of the harshest attacks I have ever seen on a sitting President of the United States in my 22 years in the Senate—the harshest. And at a time when we are in the process of trying to build an international coalition, the timing could not be much worse.

Also, I am bothered that people would say: Well, he said it. I'm just sure he did.

Well, he didn't say it. And if somebody has a quote—an accurate quote—that shows I am incorrect, I will stand here and say, oops, I'm wrong, because I believe more than anything my integrity means more to me than whatever somebody else says. I want to be factually accurate.

Before I came down yesterday to the floor, I said: Give me a transcript of the speech. I wanted to see exactly what it said. I didn't want to say: It didn't sound like something President Bush would say to me. And I have heard him give many campaign speeches. I know him pretty well. That doesn't sound like him. Where is it in his speech? Oh, he didn't say that.

He even went on to say both Democrats and Republicans are working to pass a good bill. And he never castigated all Senate Democrats as being unpatriotic or not interested in national security—he didn't say it.

Surprisingly enough, just because something is in the Washington Post does not make it right. The Washington Post was not even quoted accurately. I mean, come on now. This is a serious issue.

I want to conclude with a statement. The Senate of the United States is a great institution, and I don't think it behooves us to quote a flier from the Republican National Committee, or the Democrat National Committee, and play a lot of politics, and say let's see what we can pull out of these documents. We are talking about a quote from the President not these fliers and statements from other people.

I can pull out more quotes right now from President Clinton and Vice President Gore stating their efforts to repudiate Saddam Hussein, the need for strong enforcement of resolutions, and on and on, that they never enforced—that they never enforced.

There were 16 resolutions passed in the United Nations dealing with Iraq, and the previous administration talked tough, lobbed a few bombs, a few cruise missiles, but we never enforced them. The net result is there have been no arms control inspections going on in Iraq for the last four years.

It is a lot more dangerous today than it was four years ago.

When I read these previous statements, both by President Clinton and Vice President Gore, about how we have to get tough against Iraq, and then we didn't do anything, it makes me wonder: Wait a minute, what is going on?

So now we are saying we should adopt a resolution that is not too far different than what we adopted unanimously in 1998 with almost no debate, and people are acting like: Wait a minute, the sky is falling. Or they try to move an issue from homeland security into the war on Iraq. I don't know if that is deliberate or just a mistake, but there is a real problem there. You can't be sending mixed signals to our potential adversaries and/or our potential allies, when we are trying to get people on our side, and misquote the President of the United States on something that important.

Mr. LIEBERMAN. Mr. President, will the Senator yield for a question?

Mr. NICKLES. I am happy to yield.

Mr. LIEBERMAN. Of course, I am working with colleagues on both sides of the aisle and with the White House to see that we can fashion a strong resolution giving the President authority to take whatever actions are necessary in Iraq.

But will the Senator from Oklahoma help me understand, what did the President mean when he said, at a fundraiser for Mr. Forrester, in New Jersey, Monday: "And my message to the Senate is: You need to worry less about special interests in Washington and more about the security of the American people"? At a welcome ceremony in Trenton, Monday, he said: "The House responded, but the Senate

is more interested in special interests in Washington and not interested in the security of the American people."

At a meeting with Cabinet members on Tuesday, the President said: "My message, of course, is that—to the senators up here that are more interested in special interests, you better pay attention to the overall interests of protecting the American people."

Then, finally, on Tuesday, at a fundraiser for Mr. THUNE, from South Dakota: "I appreciate John's vote on a good homeland security bill. And the Senate must hear this, because the American people understand it: They should not respond to special interests. They ought to respond to this interest: protecting the American people from a future attack."

So I say the problem here is we have a disagreement about how to best protect homeland security workers or whether to protect them, and also how to preserve the authority of the President over national security. That is a good-faith dispute which we are having.

But I think the concern is that the President was questioning the patriotism of those who do not agree with him on that issue.

Mr. NICKLES. I will be happy to respond to my colleague. I actually read both of those quotes. I put one in the RECORD. I will put both quotes in the RECORD so the American people can see this.

I read the President's comments. You only read one line. I read three paragraphs—he never said, "The Democrats in the Senate are not interested in national security." That was the mad-dening quote. He never said it—never said it. Yet it was accepted that he said it. That is wrong. It was stated on last night's TV, stated in this morning's floor debate. I heard one or two people say he impugned the integrity of the entire Democratic caucus. No, he didn't. Read what the President said. He even complimented Democrats. He said both Republicans and Democrats are working hard to pass a good bill.

There are consequences to words. Words are important. I read the President's statements both at the Forrester event and the Thune event. They were not offensive, and they never stated what was said on the floor of the Senate. They were misconstrued somehow, some way. That is unfortunate because there are consequences to our words.

There are some people who listen. There are headlines. I haven't read what the European papers have said, but I don't look forward to that because I am afraid it sends the wrong signals.

I do agree with my colleagues, we should improve the quality of debate in the Senate. If we ever quote anybody, we should quote them accurately. We should never impugn the motives or integrity of any Member. That has happened more frequently around here than it should. Nor should we impugn

the motives or integrity of the President of the United States. Certainly if we are going to quote the President, an equal branch of Government, we should do it accurately. That wasn't done in this case.

I don't think we should be reading from campaign flyers because we could do that all day long. We don't want to turn this into a political brawl. We want to legislate. We need to pass a Department of Homeland Security bill. We need to work out the issues. There is a legitimate debate, a difference of whether or not we should change the President's power or authority in dealing with employees. Should he have a national security waiver? Every President, going all the way back—most people said since Jimmy Carter—I believe to John F. Kennedy, has had a national security waiver in dealing with employees. The President of the United States needs flexibility to put people in, do different things.

Senator GRAMM has shown me a complaint filed by a union that was upset because of higher notification status—they didn't negotiate that with the union. That is absurd. The President should not have to negotiate with the union; if he feels compelled to issue a higher security threat to the Nation's people, he should not have to negotiate that with the union. One union has already filed a complaint, I guess before the NLRB, about that.

Again, I will not impugn the integrity or the motives or the patriotism of a colleague because they may have a difference with me on that particular issue.

Mr. BYRD. Will the Senator yield?

Mr. NICKLES. I am happy to yield.

Mr. BYRD. Who has the floor?

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BYRD. I want to inquire as to how long the Senator believes he will be needing the floor.

Mr. NICKLES. I will conclude very shortly.

Mr. BYRD. I am not complaining.

I would also like to quote George Romney, who used to be Governor of Michigan.

Mr. NICKLES. I remember George Romney.

Mr. BYRD. Here is what he said: I didn't say that I didn't say it. I said that I didn't say that I said that. I want to make that perfectly clear.

Mr. NICKLES. I appreciate the chairman of the Appropriations Committee for his enlightening the debate.

I will yield the floor.

Again, I want to help restore the dignity and integrity of Senate debate. I want to help repair some of the damage that might have been done between the legislative branch and the executive branch. It is critically important. I say this mindful that I used to be one of the leaders when there was a Democrat in the White House. I didn't agree with President Clinton many times, and I stated so on the floor with great energy many times. I may have crossed

the line sometimes. I am not sure. But I think it is very important that we respect the office of the President of the United States and that we not misquote the office of the President of the United States, nor that we ever misquote colleagues.

I am very insistent that we be accurate in our positions, our statements, our numbers, our quotes. If not, it is demeaning to the body.

Vice President Gore's speech to a San Francisco group was very demeaning to the office of the former Vice President because I think it undercuts the existing administration's dealing with some problems that were left by the previous administration.

Mr. LIEBERMAN. Will the Senator respond to a question briefly?

Mr. NICKLES. I am happy to.

Mr. LIEBERMAN. I agree with everything the Senator has said. We have so much important work to do. We ought to go about it, even when there are differences of opinion, not impugning—to use his term—each other's motives.

Would the Senator not agree that the processes of government would also be made not only more productive but more respectable if the President himself would not impugn the motives of Members of Congress of either party when they disagree with him?

Mr. NICKLES. I will tell my friend and colleague, I just read the quotes. I don't think he was impugning our motives. He did not say Senate Democrats. If there is anything else from this dialog and speech, I hope the press and others will realize, the President never said, "Senate Democrats aren't interested in national security." That is a misquote, and I am afraid a misquote that has done some damage. Hopefully, it can be repaired.

I listened to the President. I don't think I have heard him impugn the motives of colleagues.

I yield the floor.

The PRESIDING OFFICER. The deputy majority leader.

Mr. REID. Mr. President, I want printed in the RECORD this statement from this e-mail, the title of which is "Urgent: Effectively defending our homeland at stake." This was sent out today. It quotes the President of the United States, George W. Bush. It says:

The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people.

That is a quote, supposedly, that the Republican National Committee sent out quoting President Bush. It goes on further in another paragraph to say:

This bipartisan approach is stalled in the Senate because some Senate Democrats have chosen to put special interest, federal government employee unions over the security of the American people.

I want that in the RECORD. That is what is sent out today as a fundraiser from the Republican National Committee, the leader of which is the President of the United States, George W. Bush.

I ask unanimous consent to print the document in the RECORD.

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

EFFECTIVELY DEFENDING OUR HOMELAND AT STAKE!

TELL YOUR SENATORS TO SUPPORT PRESIDENT BUSH'S HOMELAND SECURITY; DEMOCRAT SENATORS PUT SPECIAL INTERESTS OVER SECURITY.

"I asked Congress to give me the flexibility necessary to be able to deal with the true threats of the 21st century by being able to move the right people to the right place at the right time, so we can better assure America we're doing everything possible. The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people. I will not accept a Department of Homeland Security that does not allow this President, and future Presidents, to better keep the American people secure." —President George Bush, September 23, 2002.

President Bush has called on the Senate to pass the bipartisan plan by Senators Gramm and Miller that creates a homeland security agency with the flexibility and freedom to manage the needs to keep America safe. This bipartisan approach is stalled in the Senate because some Senate Democrats have chosen to put special interest, federal government employee unions over the security of the American people. Instead of providing President Bush with the power he needs to protect the homeland, these Senate Democrats would strip the Presidency of a vital national security tool every President since John F. Kennedy has had—the power to suspend collective bargaining agreements during times of national emergency. Learn why this is critical to our homeland defense: [http://www.gopteamleader.com/myissues/view\\_issue.asp?id=3](http://www.gopteamleader.com/myissues/view_issue.asp?id=3);

This week the Washington Post exposed why some Democrat Senators have put special interests over our national interests by reporting that "lawmakers are loath to cross them just weeks before critical elections," saying that Democrats have received "\$50 million in donations in this cycle" alone. Tell these Democrat Senators that our homeland security is more important than partisan politics and that they need to support the bipartisan bill endorsed by President Bush. We need a single homeland security agency that:

Protects the President's existing National Security authority over the federal workforce;

Gives the new Secretary of Homeland Security the flexibility and freedom to manage to meet new threats;

Protects every employee of the new department against illegal discrimination, and builds a culture in which federal employees know they are keeping their fellow citizens safe through their service to America.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Did the Senator want me to yield to him?

Mr. GRAMM. I wanted to put something in the RECORD.

Mr. BYRD. I yield to the distinguished Senator without losing my right to the floor.

Mr. GRAMM. Mr. President, we were debating homeland security at one point earlier today. A perfect example of the kind of problem I am concerned about has just come to my attention. That is a complaint that has been filed

by the National Treasury Employees Union against a system that we are all familiar with. When there is concern about a potential terrorist attack, the Government has set up threat priorities. Green is a low threat, blue is a guarded threat, yellow is an elevated threat, orange is a high threat, and red is a severe threat.

We have just gotten word that the National Treasury Employees Union—and I want to put this in the RECORD—has filed a complaint basically contending that this system of ratings violates their union contract because the Department was required to negotiate with them before it sent out a warning system.

I also want to put in the RECORD the statement from the White House release on it that said:

In effect, the union is saying that the Customs Service has no right to implement the President's homeland security direction without entering into lengthy negotiations. And since the Customs Service went ahead anyway, it is now suing the Customs Service in the Federal Labor Relations Authority.

This is a case that just happened that we ought to be looking at as we write this bill.

I thank the Senator for yielding. To save money for the taxpayers, we produced one document on one side of the paper, and the other document on the other side of the paper. So when we put it in the RECORD, look on both sides of the paper. I ask unanimous consent that these documents be printed in the RECORD.

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

UNITED STATES OF AMERICA, FEDERAL LABOR RELATIONS AUTHORITY—CHARGE AGAINST AN AGENCY

1. Charged Activity or Agency: United States Customs Service, 1300 Pennsylvania Avenue, NW, Room 2-3-D, Washington, DC 20229, (202) 927-2733, fax. (202) 927-0558.

2. Charging Party (Labor Organization or Individual): National Treasury Employees Union, 901 E. Street, NW, Suite 600, Washington, DC 20004, (202) 783-4444, fax. (202) 783-4085.

3. Charged Activity or Agency Contact Information: Sheila Brown, Director Labor Relations, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, (202) 927-3309, fax. (202) 927-0558.

4. Charging Party Contact Information: Jonathan S. Levine, Asst. Counsel for Negotiations, 901 E St., NW, Suite 600, Washington, DC 20004, (202) 783-4444, fax. (202) 783-4085.

5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? (See reverse) (1) and (5).

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

On or about August 20, 2002, Customs issued a Customs Alert Protective Measures Directive without first notifying NTEU and affording it the opportunity to negotiate in violation of 5 U.S.C. 7116(a)(1) and (5).

#### TIMELINE

March 11: President signed Homeland Security Policy Directive 3 (Attachment A), which called for the creation of the five-level

Homeland Security Advisory System. The key idea of this system was that federal state, and local agencies would adopt standardized protective measures for the different threat levels. This began a formal 135 day comment period.

July 26: Attorney General Ashcroft and Governor Ridge reported to the President that the system was ready to put into effect.

July 28: The White House directed all agencies to conform their protective security conditions to the new five tiered system.

August 20: The Commission of Customs, Judge Rob Bonner, complied with this directive from the President by issuing a Customs Alert Protective Measures directive to the entire customs Service (Attachment B).

September 10: The President decided to raise the threat level from yellow (level 3) to orange (level 4). The Customs Service and many other federal, state, and local security agencies responded by increasing their protective measures to the next level. Virtually all experts agreed this is a better system than what we had before.

September 18: The National Treasury Employee Union, which represents some officers of the Customs Service, filed a grievance with the Federal Labor Relations Authority (Attachment C) against the customs Service for issuing the directive.

[Their grievance reads: "On or about August 20, 2002, Customs issued a Customs Alert Protective Measures Directive without first notifying and affording it the opportunity to negotiate in violation of 5 U.S.C. 7116(a)(1) and (5)." (5 U.S.C. 7116(a)(1) and (5) is the standard statute under which ULP grievances are customarily filed.)]

In effect, the union is saying that the Customs Service has no right to implement the President's homeland security direction without entering into lengthy negotiations. And since the Customs Service went ahead anyway, it is now suing the Customs Service in the Federal Labor Relations Authority.

The PRESIDING OFFICER. The Senator from West Virginia.

#### IRAQ

Mr. BYRD. Mr. President, amidst the wall-to-wall reporting on Iraq that has become daily grist for the Nation's news media, a headline in this morning's USA Today leaped out from the front page: "In Iraq's arsenal, Nature's deadliest poison."

The article describes the horrors of botulinum toxin, a potential weapon in Iraq's biological warfare arsenal. According to the Journal of the American Medical Association, botulinum toxin is the most poisonous substance known. We know that Saddam Hussein produced thousands of litres of botulinum toxin in the run up to the Gulf war. We also know where some of the toxin came from. Guess. The United States, which approved shipments of botulinum toxin from a nonprofit scientific specimen repository to the government of Iraq in 1986 and 1988.

I recently asked Defense Secretary Donald Rumsfeld about these shipments during an Armed Services Committee hearing a week ago. I repeat today what I said to him then: In the event of a war with Iraq, might the United States be facing the possibility of reaping what it has sown?

The threat of chemical and biological warfare is one of the most terrifying

prospects of a war with Iraq, and it is one that should give us serious pause before we embark on a course of action that might lead to an all-out, no-holds-barred conflict.

Earlier this week, British Prime Minister Tony Blair released an assessment of Iraq's weapons of mass destruction program which contained the jolting conclusion that Iraq could launch chemical or biological warheads within 45 minutes of getting the green light from Saddam Hussein.

The British government assessment, while putting Iraq's chemical and biological capabilities in starker terms than perhaps we have seen before, closely tracks with what U.S. officials have been warning for some time: namely, Saddam Hussein has the means and the know-how to wage biological and chemical warfare, and he has demonstrated his willingness to use such weapons. By the grace of God, he apparently has not yet achieved nuclear capability.

On the matter of biological warfare, Gen. Richard Myers, Chairman of the Joint Chiefs of Staff, testified before the Senate Armed Services Committee last week that many improvements have been made to the protective gear worn by American soldiers and to the sensors used to detect chemical or biological agents.

But according to the USA Today article on botulinum toxin, U.S. troops would be just as vulnerable to botulinum toxin today as they were during the Gulf war.

This is what the article states:

There's still no government-approved vaccine, and the only antitoxin is made by extracting antibodies from the blood of vaccinated horses using decades-old technology.

Last year's anthrax attack on the U.S. Senate gave all of us in this Chamber firsthand experience with biological warfare and new insight into the insidious nature of biological weapons. And that attack—hear me now—involved only about a teaspoon or so of anthrax sealed in an envelope. The potential consequences of a massive bio-weapons attack against American soldiers on the battlefield boggle the imagination.

My concerns over biological warfare were heightened last week when I came across a report in Newsweek that the U.S. Government had cleared numerous shipments of viruses, bacteria, fungi, and protozoa to the Government of Iraq in the mid-1980s, at a time when the U.S. was cultivating Saddam Hussein as an ally against Iran. The shipments included anthrax and botulinum toxin.

Moreover, during the same time period, the Centers for Disease Control, CDC, was also shipping deadly toxins to Iraq, including vials of West Nile fever virus and Dengue fever.

This is not mere speculation. I have the letters from the CDC and the American Type Culture Collection laying out the dates of shipments, to whom they were sent, and what they