

involvement or public service. Indeed, in 1990 she returned to the House. In the interim, she assumed the position of Assistant Secretary of State for Ocean and International, Environmental, and Scientific Affairs, where she helped to strengthen environmental policies, particularly with regard to protection of whales, toxic chemical disposal and ocean mining. In 1980, she took the helm as the first woman president of the Americans for Democratic Action. Two years later, she returned to elected office in Hawaii by taking the gavel as chairperson of the Honolulu City Council. She twice ran unsuccessfully for other office, this time for Governor and mayor of Honolulu, then triumphed in 1990 in a special election for the remainder of my term in the other body, at the passing of our beloved colleague, Spark Matsunaga.

Since 1990, she continued in characteristic style, advocating and articulating the ideals that she had espoused during her first terms in the other body. I remember PATSY marching up the Capitol steps with vigor, alongside her other female colleagues, to show her support for Anita Hill in 1991. I was pleased to work with PATSY, the distinguished senior Senator from Hawaii, Senator DAN INOUE, the honorable Secretary of Transportation, Norm Mineta, and my other colleagues in the establishment of a Congressional caucus to address the needs of Asian Americans and Pacific Islanders in 1994.

I recall her leadership in 1996 on a successful boycott of a joint session speech by French President Jacques Chirac, in protest of French nuclear testing in the Pacific, much in line with our shared commitment to championing the disenfranchised peoples of the Pacific in our respective bodies. As we hope to complete action on a welfare reauthorization bill in this session, I remember PATSY's steadfast efforts before the passage of the 1996 welfare reform law in keeping us mindful about the possible effects of social policy changes on children. She had continued the battle cry with the current welfare reauthorization and ensured that the voices of the smallest and most vulnerable were heard.

PATSY was one of the last Members of the 107th Congress who served in the historic 89th Congress that passed much of the landmark Great Society legislation. PATSY's lifelong efforts to open educational access to countless Americans and ensure them the best educational opportunities were the achievements that brought her the greatest satisfaction. "Anything for the children," was PATSY's guiding conviction. I believe we shared the same view about education that this crucial area is where we can do the most good for the most people.

A great spirit has come and gone before us. PATSY's vigor and courage to tackle difficult issues in the wide realm of social policy will be sorely

missed. There are fewer trails for women and minorities to blaze, thanks to PATSY's determination and spirit. Indeed, her trailblazing efforts will not end with her death, for the things she put into place will continue to benefit the lives of countless individuals, in our lifetime and for generations to come, in ways that may not ever be truly appreciated.

We are enjoined to carry forth the mission that my dear colleague pursued during her remarkable career. With great sadness, we bid a final farewell and aloha pumehana to a fearless and remarkable lady, the most honorable PATSY TAKEMOTO MINK.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. I ask unanimous consent to speak for as much time as I consume.

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

HOMELAND SECURITY

Mr. DORGAN. Mr. President, I have been hearing in recent days that, once again, the President is on the campaign trail across the country. Sometimes he does two, three, four, and five fundraisers a day. At most of these fundraisers, the President criticizes the Senate for not passing the homeland security bill exactly the way he would like it. I thought I might make a couple of comments about that.

First, we in the Senate are in the process of debating the homeland security bill. I hope the President will ultimately be willing to compromise with us on some key issues. I believe we will pass a homeland security bill, and I believe it will be soon if we get some willingness to compromise on the part of the White House. We will also, at the President's request, take up a resolution dealing with the question of Iraq and the use of force and the United Nations.

It is our intention on the majority side to have a good, aggressive debate on these issues, but at the same time work with the President and accommodate the President as much as possible.

But I want to make a few points that I think are important. Foremost among these is that I don't think it is appropriate for the President to be going around the country, doing multiple fundraisers every day and suggesting that the Senate or some Members of the Senate do not seem to care

about national security. I think that is terribly inappropriate.

It is not inappropriate at all for the President to campaign. He certainly will and should do that, but I don't think he ought to use these campaign opportunities to do what he has been doing. I understand he has raised something like \$130 million. He is a prodigious fundraiser, and he has every right to do that. But it is unfortunate that a President who has spoken of a desire to change the tone of political discourse in Washington, DC, is rushing around the country doing fundraisers and pointing the finger at the Democrats in the Senate, saying they don't care about the security of this country.

The fact of the matter is that Democrats proposed the creation of a Department of Homeland Security just one month after the terrorist attacks on September 11 of last year. Lest we forget, Senator LIEBERMAN—the prime sponsor—introduced in the Senate a bill to create a homeland security Cabinet agency exactly 30 days after the September 11 attacks.

The President opposed it. The White House opposed it. They said they didn't want it. They objected. Month after month after month, the White House opposed the creation of a Cabinet level agency dealing with Homeland Security.

In fact, when the legislation was marked up in the full committee chaired by Senator LIEBERMAN, the Republicans largely voted against it in the full committee because the White House opposed it, the President opposed it, the President didn't want it.

And then on June 6, a full 9 months after the September 11 attacks, the President did a 180 degree reversal and said: Now we want a new Department. And, by the way, we not only want this new Department, but we want the following provisions to apply to the 170,000 workers of the new Department, and we are not willing to compromise. We demand that it be done the way we intend it to be done. That was the message from the White House.

First, for 9 months they didn't want an agency. Now they not only want an agency, but they say we must have it their way and will not compromise. And then, in the middle of the Senate debate, the President goes on the campaign trail, and suggests that Democrats don't care about national security. That is nonsense.

The President said he wants to come to town to change the tone. There is precious little evidence of that in recent weeks, I would say. But I do think it is time to change the tone.

The right thing for the President and the Congress to do is to work together to reach a fair compromise and to find a way to do this in a thoughtful way. Changing the tone means you sit down together and try to get the best of what both sides have to offer. That is all we ask at this point.

We have been on this legislation for some 4 weeks. There is no reason we

cannot have thoughtful and satisfactory compromises so we can pass a Department, a Cabinet level agency on homeland security, through this Senate, go to conference, and get a bill to the Senate he can sign. There is no reason we cannot do that and do that soon.

I believe that is the goal of Senator LIEBERMAN. I know it is the goal of Senator DASCHLE. I just visited with him. We want this to happen.

I said the other day that I would never, ever, under any set of circumstances, question whether anyone in this Chamber supports this country's national security. Everyone does—liberal, conservative, Republican, Democrat; we all strongly support the security of the United States. We may come at it from different angles or different approaches and have different ideas, but I believe everyone really has the best interests of this country at heart. I believe that of the President as well.

I think it is now time for the President to sit down with us and reach agreements and reach some compromises and get this piece of legislation moving. And I think it is time, long past the time, for the President to stop going out on the fundraising trail and using this issue in a divisive and inappropriate way.

We need to get this right. This debate isn't about politics. This is about effectively protecting the interests of this country. And we are all in this together.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Chair.

I thank my friend from North Dakota for what he said. It has gotten frustrating in the last couple of weeks, and all the more so because we agree on 90 to 95 percent of what ought to be in legislation creating a Department of Homeland Security.

The senior Senator from Texas, who is the lead advocate for the administration, for the White House, for the President, and for himself, has said the substitute he offered to the bipartisan bill that came out of our Governmental Affairs Committee is 95 percent the same as the Governmental Affairs Committee bill. We have a 5 to 10 percent difference, mostly focused on this question of how you protect and reassure Federal workers who are moved from other Departments to this new Department while not undercutting the President's authority over national security. Surely we can find a way to bridge that gap on a bipartisan basis. As my friend from North Dakota knows, Senator CHAFEE is taking a lead role in creating a bipartisan alternative to the parts of our committee bill that dealt with this question. And I accepted that compromise even though it wasn't the one our committee first adopted and I proposed, because I thought it was a way to break the logjam and allow us to create and

enact into law that 95 percent which we all agree on. But the White House has remained unyielding.

Mr. DORGAN. Mr. President, if the Senator will yield for a question, is it not the case last week after several weeks where we had this impasse with the White House on this issue—the bipartisan proposal that tries to be the centrist proposal—it was once again blocked? The White House said, No, we are not interested in doing that either. It is either our way or no way. If it is not our way, we intend to go to fundraiser after fundraiser and criticize.

I have great respect for the President. I have supported him on many things. Especially in a political season with all of this discussion existing in this country about changing the tone, I am just not very happy seeing three to five fundraisers a day and using the opportunity to say, By the way, the Senate can't get this bill done. What is the bill? The bill is to create a Cabinet-level Department of Homeland Security proposition which the White House opposed for 9 straight months.

In fact, the ranking Member—I say to the Senator from Connecticut—voted against the proposal, and then, 2 weeks later, found out he was in favor of the proposal. He used a whimsical quote about being in favor of something which he voted against because the White House pivoted and said, No, we support it, but based on the notion of what we believe must happen. And, if that is not satisfactory to the Congress, we are going to go criticize the Congress rather than reach a compromise.

Once again, I would like to see a change in tone, but I haven't seen it, at least in recent weeks.

Mr. LIEBERMAN. In response to my friend from North Dakota, he is absolutely right on a few of the points involved. Words have consequences, both in our personal lives and in our public lives. When you take the good-faith dispute we have had here about this single question of Federal employees' rights to be transferred to the new Department and suggest people in the Senate are putting those concerns ahead of national security by which you are questioning their motives, and even their patriotism, to some extent, it has consequences. It has consequences because we naturally feel we have been treated unfairly. It is unfortunate; it has consequences beyond this bill. It began to have consequences last week on questions related to a resolution that would authorize the President to take military action in Iraq, if necessary.

I think what my friend from North Dakota has said is very important to remember here. We have tried and have not always succeeded. But when we come to questions of national security, foreign and defense policy, as we always say, partisanship ends at the Nation's borders. We are in a new world post-September 11, 2001, where national security is within our borders. The

questions of national security are within our borders. We should strive for the same absence of partisanship and debate this as we do internationally. That is why we have all got to lower our voices a bit and try to focus on the very narrow area of difference we have so we can get this job done to protect the security of the American people.

The Senator from North Dakota is right. The truth is, Senator ARLEN SPECTER, our Republican colleague from Pennsylvania, and I and others introduced a bill to create a Department of Homeland Security in October of last year. The administration had what I always respected as a good-faith difference of opinion. They didn't feel it was necessary. They felt the Office of Homeland Security the President created by Executive Order could do the job. I always felt, and Senator SPECTER felt, we needed a Department with a strong Secretary with budgetary authority and line authority over people serving under them. That dispute went on for 8 months until the President endorsed the idea on June 6. I never would have thought to say or allege, because the President and we had this dispute about how best to protect homeland security, somehow the President was putting that bureaucratic or ideological vision—whatever you call it—ahead of his commitment to national security. Obviously, that would have been unfair, just as I think some of the statements the President has made in the last week are unfair.

It is Monday, and it is a new week. Hope springs eternal. I hope we can sit and reason together with the biblical ideal—the prophet's vision—in our minds.

There is a danger lurking out there. The terrorists are still out there. They hide in the shadows. But they are at work planning to strike us again. Shame on us if we don't get together and create a Department that can prevent them from doing that. Let us do it this week. We can break this logjam. It is that simple.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I listened with interest while my two friends discussed this issue. I may as a footnote point out they really are my two friends. My mother used to say you could always tell how much a Senator hated another one by how many "distinguished" and "great friend" adjectives he used. But, in this case, it is genuine.

I think the Senator from North Dakota has raised a legitimate issue about the tone. I would like to do what I can to change the tone of this debate.

As I see it, speaking solely for myself as maybe the last Member of the committee, the fight here is about the President's ability—or, more appropriately, the new Secretary's ability—to manage the Department efficiently and effectively.

I do not see the history quite the same way in terms of the dispute,

Should we have a Department or should we not have a Department in the months leading up to the President's request.

I believe that within the administration there was always an assumption that a Department, at some point, made sense, but the administration was not willing to identify a specific set of recommendations as to how that Department would be formed until the President made his statement.

So I do not think it was a matter of resisting, resisting, resisting, and suddenly changing his mind. I think it was: We are going to keep our options open. We will not endorse anything. Therefore, we will not endorse the Lieberman bill until we have decided what it is we want.

I think the Senator from Connecticut has been more than generous in his willingness to grant good faith to the administration on that issue. I think that is correct on both sides.

Now, as I understand the issue, listening to members of the administration, as we meet in our meetings, and listening to the debate both in committee and on the floor, there is no desire, at least substantively within the true policymakers of the administration, to turn this into a partisan fight. I will grant there are those who are willing to grab for any partisan advantage they can find. I would suggest that people who have that inclination exist on both sides of the aisle, populate both parties, and, indeed, may even be found in the Green Party or some other party that likes to pose as being above searching for a partisan advantage.

But I believe the problem in this circumstance stems from the high stakes that are involved in making sure the Department is done right. I have addressed this on the floor before, and the Senator from Connecticut has heard me address it in committee. The challenge of putting together a Department such as this is so overwhelming, and the possibilities that it will go wrong if it is not properly constructed in the first instance are so great, that things that might have been resolved on a more normal legislative question become sticking points on this one.

I have said on the Senate floor before that I was involved in the creation of the Department of Transportation, which has some similarities to this. Because we took the Coast Guard out of the Treasury Department—I say “we”; it was done in the Johnson administration. I was in the Nixon administration that inherited this shortly after it was created but while the problems still existed.

They took the Coast Guard out of the Treasury Department. They took the Highway Administration out of the Commerce Department. They took the FAA from its status as an independent agency. They took the Urban Mass Transit Administration out of the Department of Housing and Urban Development. And they took several other

agencies of smaller stature, pasted them together into a single Department, and discovered major management challenges.

Whenever I address this issue in front of a group of business executives who say, Why can't we put this together very quickly, I always ask them the question, Have any of you ever been engaged in a major corporate merger? And when they nod their heads, I say, Do any of you have any thoughts that this will be easy?

It is at least twice as large as the challenge creating the Department of Transportation. This is not the same thing as creating the Department of Education, which simply took the Office of Education and slapped the “Department” label on it. It still had the same culture, the same work rules, the same procedures.

It is not the same thing as taking the Department of Veterans Affairs, which was simply taking an existing office, slapping a new label on it, and saying, OK, we are now going to take veterans and elevate them to Cabinet status. In this case, it is putting together so many disparate agencies, many of which have been functioning in an atmosphere where homeland security is a part, but almost an unimportant part, of their main mission, but because of where they are, they need to be pasted together in this new Department and have a major change.

As I listen to the White House individuals talk to us on the Republican side—as we talk about this, they say: This is not really a matter of union versus nonunion; this is a matter of the power of the President and, through the President, his delegate, the Secretary, to organize the Department in the most efficient way. And we are afraid—I am speaking now for the administration, which is maybe presumptuous on my part, but as I hear what they say, it is: We are afraid that if it comes in the form we are talking about here, we will end up with a Department that is unmanageable, and the President will have to go through so many hoops, laid out in departments that are not focused on homeland security, that it will be impossible for the new Secretary to function.

I ask all of my colleagues this rhetorical question—I have asked the Senator from Connecticut this question, and he has answered yes—but I ask all of the Senators this rhetorical question: Would you be willing to accept appointment as the new Secretary of this Department in the form in which it is being proposed to us under the Breaux-Chafee-Nelson amendment?

I have some management experience. I have been in the executive branch in a Cabinet-level Department. I could not honestly answer that question yes for myself because I watched as the first Republican Secretary of Transportation, John Volpe, wrestled with all of the problems of moving people around the Department. The Congress gave him, a high degree of management

flexibility. He could move people around without asking congressional approval for a certain period of time. I should probably research the exact period. My memory is that it was 3 years after the creation of the Department. He could move people, almost capriciously, for 3 years.

Secretary Boyd, who was the first Secretary of Transportation, did it for 18 months. I know Secretary Volpe did it until the time came. It was absolutely essential for me, in the office I organized for the Secretary, to have that kind of flexibility. I was moving people around, violating what had been their traditional kinds of protections, simply because the whole thing would not function if we did not have that kind of flexibility.

The Congress put a time limit on it because they wanted to make sure that the Secretary would not abuse that power. I remember how concerned Secretary Volpe was that the clock was running, and he had to get the reorganization done before midnight struck and suddenly everything would be frozen again.

We were talking about a Department dealing with entirely domestic issues, having no national security implications, in a situation where there was no external pressure, such as a potential attack. And it took 3 years or more before that Department came together and functioned.

As I have reminded Senators before, an even larger example of this kind of organization, which is the closest parallel we have to creating the Department of Homeland Security, was the reorganization of the Department of Defense that came after the Second World War. That was in 1947.

The Department of Defense probably did not fully function until the Goldwater-Nichols Act of Congress stepped in, what, 15 years later? Certainly more than a decade later. And it is instructive to remember that the first Secretary of Defense, faced with all of these challenges, committed suicide.

There are those who say, well, there were other problems in his life. And I am sure that is true. I will not attribute his ultimate depression and decision to end his life to the difficulties of managing the Department of Defense, but it certainly can be said that those difficulties did not help.

So if the President were to call me and say: Bob, you have had experience at Transportation; you have been in the executive branch; you have been an appropriator; you have a unique background; I want you to be the Secretary of Homeland Security and serve the country; I would have to say to him: Mr. President, not under the terms of this bill. My ability as the CEO would be hamstrung.

The Senator from Connecticut is exactly right. Through his good efforts and his willingness to be open, which is his hallmark and his trademark as a Member of this body, he has worked with the White House in crafting something that is agreeable to both sides 95

percent, maybe even more than 95 percent. There is no point in putting a firm number on it because the two are now tremendously close.

The remaining issue is the kind of issue that would cause me to turn down service in this position. May I hasten to say, I am not running for the position, lest anybody have any mistakes about this. I enjoy the Senate too much.

As I have tried to look at it as objectively as possible, I have decided that the President's statement that he would veto this bill is a correct one. It is not rooted in a desire to embarrass the Senate or impugn the integrity or the ability of the Senator from Connecticut or his committee on which I serve. It is rooted in a firm belief that the management procedures of this Department, as structured in this bill and as they would remain structured under the proposed amendment, would prevent the next Secretary, whomever he or she may be, from having absolutely essential authority to organize the Department.

I have said this before—I will say it again; no one has taken me up on it—I would be willing to put a time limit on the kind of flexibility I think we need. If indeed there are those who are nervous that some future President, even if they give this one every benefit of the doubt, those who are nervous that some future President might abuse this power, I would say: Let's give the President the power he wants on management flexibility and put a time limit on it and say his ability to move people around would expire after 5 years, I would think would be more logical, if he had the experience of something like 3 at the Department of Transportation.

On the issue of his ability to designate people for national security, the President probably does not want a time limit on that. He probably believes that every President should be preserved in the rights they have had. That one might be negotiated as well.

But as I understand it, these are the two challenges: First, the flexibility factor which, frankly, we have not been talking about on the Senate floor because we have been so hung up on other ones. That would be the one that would give me the most pause if I were the potential Secretary. I would be willing to see if we couldn't work that one out with a time limit. And then the second issue, the right of the President to make a national security decision, maybe we could find a way around that one, too, in terms of some sort of time circumstance. I don't think just because it was done with Jimmy Carter means that it has to remain sacrosanct forever. We can look at it in view of the threat, get some experience under our belt as to how the new Department works, and say that Congress will relook at this at X particular point.

My bottom line, speaking solely for myself and not for the administration—because I am not authorized to

do that—is that I hope we can, in fact, reach out in the spirit the Senator from Connecticut has always shown, find some solution, but recognize that it is not a political fight to determine who is protecting unions and who is the most patriotic. It is a serious, legitimate, important management challenge as to how much power this President and future Presidents, the newly appointed Secretary and future Secretaries, are going to have to manage the Department in the most efficient possible way to preserve our homeland against attacks.

The reality is that the attacks will come. The reality is that some of them will get through. No matter how well the Department is manned, no matter how well the Department is structured, no matter how vigilant the employees of the Department will be—and I will stipulate, I expect that all of them will be vigilant, whether they are union members or nonunion members or don't care—an attack will make it through somehow, somewhere.

And then we want to look back on it and say: We did the very best we could to see to it that the Secretary had all of the tools he or she might need. And, yes, this attack got through, but these didn't because we put the Department together intelligently in the first place.

I will be happy to enter into whatever discussion the Senator from Connecticut may want to have, knowing that I don't speak for the administration, but I speak as a member of his committee from the other side of the aisle who has always had the highest respect for his willingness to listen, his willingness to cooperate, acknowledge that he has helped me on some of the issues I believe strongly about to his own political peril because there are some Members on his side who did not want to do some of the things I wanted to do. I would hope in the same spirit that he has mentioned here that something can be worked out.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend from Utah. I return his respect and trust quite directly. I appreciate what he said. I appreciate the tone in which the Senator from Utah spoke, and just to get the nonsense of last week behind us, that we can obviously disagree on issues related to this bill or other bills without questioning, without impugning each other's motives or, Lord knows, questioning each other's patriotism.

I agree, when we create this Department of Homeland Security—and we will create a Department of Homeland Security; we are going to find a way to do it before long, I hope—it is going to be a massive undertaking: 170,000 employees, clearly the largest reorganization of the Federal Government since the end of the 1940s, the post-Second World War reorganization of our national security and foreign policy apparatus.

As the Senator from Utah said, this is not just putting a new name on the door, "Department." This is taking a lot of different people from a lot of different places in our Government and bringing them together under a strong Secretary in focused divisions within that Department. Those are exactly the parts that are in common between the proposal from our committee and the White House proposal.

Why are we doing it? Simply because the current state of disorganization is dangerous. When you have three, four, or five different Federal Government agencies at a point of entry into the country at the border and they are each in separate offices—they may bump into each other, but they are not really working together in a coordinated way; they usually don't even have telecommunications equipment that speaks easily in a crisis to one another—that is dangerous disorganization.

If you have, as we know from the investigation of the Joint Intelligence Committees, a situation where there are bureaucratic barriers between the intelligence community, the law enforcement community, and information is not shared in a way that can put all the dots, as we keep saying, on a board so you can see the outlines of a potential terrorist attack so you can stop it, that is disorganization that is dangerous.

I could go on and on, to each of the five or six divisions of the new Department.

So that is why we are all proposing this step. It is going to be a big job. I want to make it clear. I know the Senator from Utah didn't mean to suggest this in reporting our conversation. I am not now, nor will I be a candidate for Secretary of the new Department of Homeland Security. When he asked me whether I would advise who was taking it to take it under the Nelson-Chafee-Breaux language—if they should accept—my answer was yes. I want to explain why, in the calm of a Monday afternoon. In this particular colloquy, we may have an opportunity to set more on the record as I see it than has gotten in to this point.

We have 170,000 employees to be moved to the new Department. The number I hear about union-represented employees is approximately 43,000 who will be moved to the new Department. There are two factors at work here. One is an anxiety among a lot of Federal workers that this existing statute, which has been referred to, that was adopted in the Carter administration, that gives the President of the United States extraordinary authority to declare that a particular category of Federal employees should not be allowed to belong to a union, an employee association, because that union membership would be inconsistent with national security—the existence of that statute applied 10 or 11 times since adoption in the late 1970s in the Carter administration, and usually in quite

narrow areas—the Defense Intelligence Agency and in similar groups—the existence of that statute used for the first time by the current administration in January to deprive several hundred employees of the U.S. attorneys' offices around the country of the right to collectively bargain, to join unions, created widespread anxiety among Federal employees.

Senator THOMPSON and I had some discussion on this last week. I don't need to get into the details of what the administration intended to do and what the employees thought. From the employees' point of view, they were worried that this statute would be used in a broader way than ever before to deny them the right to collectively bargain. I must say, again, that the right to collectively bargain among Federal employees is quite limited; most notably and, of course appropriately, Federal employees belonging to a union do not have the right to strike. That is a law. There are various other items that are normally negotiated between management and unions that are not negotiated in the Federal employee case—most notably salary. We are the managers, in that sense, who set salary levels—we in the Congress.

So now we come to a recommendation that the Department of Homeland Security be created. There is great anxiety—and it remains so—among the 43,000 employees currently represented by unions who, when they are moved to this Department, because the name of the Department is Homeland Security, they might well be deprived of their collective bargaining rights. Our committee considered that and we came up with a proposal which, to state it in summary, would have allowed employees to appeal such a decision, such an order denying them collective bargaining rights to the Federal Labor Relations Authority—two-thirds of whose members, incidentally, are appointed by the sitting President. So, presumably, it would not have been a hostile board. When we came to the floor, and after that measure was in our proposal, the White House was quite adamant on the point that it would represent a lessening of the President's national security authority. Though the lessening would have been small, literally that was true. That would have been true because we would have subjected the Presidential decision on national security grounds to review by this administrative body and appeal to the administrative body. That is why, when I saw the gridlock here, and understanding that we agree on more than 90 percent of the two proposals—one White House and one committee—before the Senate now, I encouraged our colleagues, Senators NELSON and BREAUX, to pursue a compromise. They engaged Senator CHAFEE in these discussions and they came up on this one with a proposal that the President would retain the authority he has, but would have to more clearly enumerate

the reasons why he was invoking this authority; and, particularly, he would have to make clear, or give a statement, that the agency whose employees he was denying the right to collectively bargain had had its mission changed from the many years since the Carter administration, when no previous President had said that doing the work of that agency was inconsistent with the union membership to national security, with no right of appeal to an administrative agency. To me, that creates what I might call a kind of minimal due process for Federal employees, just to require the President who, by the one court case in this statute that had been decided, the President's authority here in that court case was held to be substantial. I mean, this is a case where President Reagan removed collective bargaining rights from a group of Federal employees for national security reasons and did not recite a determination as to why he did it. I believe the district court sided with the employees. It was appealed to a circuit court, and the district court said the President has to at least recite a determination rather than just issue an order.

The circuit court actually said—I am paraphrasing and probably making something more complicated, a little more direct—the circuit court said they accept a presumption that though the President did not recite a determination, when it came to national security, his judgment was determinative. It set a very high standard for anyone questioning how a President would exercise this power the statute gives him.

So my own feeling is that in the Nelson-Chafee-Breaux compromise, we have now put in a little language to require a statement of why the President did it, and the work of this Department, or agency, or office that changed since they moved to the new Department, but effectively no appeal from that. So I think we achieved a little measure of due process for the employees, without at all diminishing the national security authority of the President.

On the question of civil service reforms, or changes, and so-called management flexibility, when the President first introduced his proposal and embraced the idea of a Department of Homeland Security, I remember speaking to Governor Ridge. He is a good man, and he was good enough to bring this up himself in a conversation we had a couple weeks ago. He said to me: I remember, Senator, that, as soon as the bill came out and you saw some of the changes we wanted on civil service, you appealed to me, why can't we put this aside for 6 months? This Department is going to take months to get up and functioning. I remember saying this to Tom Ridge—that this is a trap, a web, and we are going to get so entangled in it that it is going to run the risk of making it hard for us to adopt legislation creating a Department of Homeland Security.

This is one of those rare cases where my prediction was correct. I say that with some understandable humility. I fear that is where we have ourselves now. In the committee bill, we adopted some bipartisan civil service reforms, worked on with great diligence by Senators AKAKA and VOINOVICH over many months. Other than that, we didn't change the existing civil service law, except that we said we required the new Secretary of the new Department, 6 months after the effective date of the legislation, to come back to Congress and tell us whether he or she thought we needed to do anything more about management flexibility as the Department was taking place, based on the experience they had.

So that is where our committee bill was. The President came in with a series of reductions in civil service protections for employees who are longstanding and that deepened the anxiety of the Federal employees that this Department was going to be used as a way to cut back on their protections, on the accountability, on the kinds of protections that, at their best, don't create rigid bureaucracy, but help to create the climate in which the best people are attracted to Federal service. The President's bill gutted that.

Now comes the Nelson-Chafee-Breaux compromise, and here, too, I think they did something quite reasonable and progressive, which is they itemized four different areas where the President can exercise broad management flexibility, but they did something that builds on the best labor-management relations in the private sector and some very hopeful experiences with similar labor-management relations in Federal Departments, particularly the Internal Revenue Service. They said in the Nelson-Chafee-Breaux compromise: Mr. Secretary, we are giving you this flexibility in these areas of current civil service protections, but we require, before you implement them, to attempt to negotiate them with your workers. That is why I say in the best of modern private-sector labor-management relations, the old hostility is not there. It is: Let's sit down around the table and figure out what works best for the company; you want jobs, we want to make a profit; let's figure out how we can best do this together. Let me mention, this is exactly the authority Congress gave the Internal Revenue Service a few years ago. It has worked quite well. In other words, in that legislation we said: Director of Internal Revenue, you have the authority to negotiate changes in the civil service, but you have to do it with your employees. In fact, they have negotiated some very progressive agreements with both sides agreeing once they sat down around the table.

In that legislation and in this Nelson-Chafee-Breaux proposal, so again we protect the authority of the President, we say if the Secretary of Homeland Security and the workers in the

Department cannot reach an agreement, then they have to take it to arbitration to the Federal Service Impasses Panel. This is a board, again, all of whose members are appointed by the current President, so it is not a hostile board, and that board makes the final decision.

I do believe that our colleagues, Senators BEN NELSON, LINCOLN CHAFEE, and JOHN BREAUX, have worked out a proposal, a genuine compromise that is different from what our committee reported out but provides a door opener both to management flexibility, to some progress in management, and does not diminish ultimately the authority of the President of the United States, certainly not with regard to his ability and capacity now to invoke national security with regard to union membership rights of Federal employees.

I am puzzled as to why the administration has not accepted this compromise proposal and the Senator from Texas is effectively involved in a filibuster of the overall bill. I remain open to discussion about parts of this. I appreciate what the Senator from Utah said about a time limit. Five years seems like a long time to me.

One of the issues we considered in the committee, and I know was considered in the negotiations, was the possibility, with regard to the civil service management flexibility, of giving—we call it demonstration authority, but the idea was for a limited period of time to give the President some of the authority he wanted, and then come back and see how it worked and consider whether we wanted to extend it.

I am grateful for the words of the Senator from Utah, and as we begin our new week, after some of the heat that was exchanged on the floor of the Senate, I am grateful for the coolness of his—in the best sense of that word—that is, the thoughtfulness of his remarks today. I will be glad to continue to talk with him to see if we can find common ground. We ought not to be in this gridlock on what I still consider to be a side issue from the main business of this Department: protecting the security of the American people.

As the Senator from Utah said, we never want to give the impression we do not think the employees who will move to this Department are as concerned about homeland security as we and the rest of the American people are. In fact, the evidence before us is quite ample that Federal employees are concerned.

The stories are legion and numerous of Federal employees—I think of FEMA employees—they were somewhere else and they rushed to the Pentagon to be of help; they flew to New York; they worked hours and hours of overtime. Of course, the most vivid demonstration of the way in which union membership is not inconsistent with national service or sacrifice is the firefighters in New York, several hundred of whom were off duty on Sep-

tember 11. When they heard what had happened, they just rushed to the scene. Nobody was thinking about whether this was supposed to be a day off under the collective bargaining agreement, what risks they were assuming, or they were going to be asked to do things that were not quite in their job description. Needless to say, a lot of them not only rushed into the building, but they never came out.

I hope we can find common ground. I offer anything I can do to supplement the extraordinary positive work of the previous triumvirate I mentioned, Senators NELSON, CHAFEE, and BREAUX, to get over this last big hurdle and get this bill adopted in the Senate, get it to a conference with the House, and then get it to the President's desk for signing.

Mr. LEAHY. Mr. President, I do not want to interrupt.

Mr. LIEBERMAN. The Senator's timing is good. That was the windup sentence.

Mr. LEAHY. I wonder if the Senator will yield to me? I wish to discuss another aspect of the war on terrorism, and that is what we can do through the Justice Department. I wonder if the President will allow me to speak about that.

Mr. LIEBERMAN. I will be happy to do so. I thank the Senator for coming to the floor and look forward to his remarks.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Vermont.

DEPARTMENT OF JUSTICE AUTHORIZATION

Mr. LEAHY. Madam President, I know we are getting down toward the end of the session and sometimes legislation falls by the wayside, but I have seen something in the last couple of days different from anything I have seen in 28 years in the Senate.

Last Thursday the other body passed the Department of Justice Appropriations Authorization Act and we filed a bipartisan conference report. I mention this because it has been 20 years since there has been such an authorization act for the Department of Justice because it has been so hard to bring people from across the political spectrum together. The House passed this conference report—by a vote of 400 to 4. I am not sure the way things are these days that we could get a vote of 400 to 4 to agree the Sun rises in the east and sets in the west.

The very same day I checked with every single member on this side of the aisle, every Democrat, and asked if they were willing to have it pass the Senate by voice vote, if need be, or a rollcall vote—it does not make any difference, but to pass it.

Every single Democrat—the distinguished Senator from Connecticut, myself, everybody else—agreed, yes, sure, go ahead and pass it. We were told there is an anonymous hold on the Republican side. This bipartisan legisla-

tion to authorize the Department of Justice is blocked—legislation to strengthen our Justice Department and the FBI that by agreement of all Members across the political spectrum will increase our preparedness against terrorist attacks, but also prevent crime and drug abuse in our cities and in our rural areas. It improves our intellectual property and antitrust laws. It would strengthen and protect our judiciary. It would give our children a safe place to go after school.

This legislation is as motherhood as one could imagine and yet the Republicans have said, no, even though the Republican-controlled House passed it 400 to 4. And even though every single Democrat in the Senate is ready to vote for it, the Republicans have said, no, we want to put an anonymous Republican hold on it and not allow it to go forward, years of work by both the Republicans and Democrats. This bill not only has my support in the Judiciary Committee, it has Senator HATCH's support. It has the support of Chairman SENSENBRENNER in the other body, as well as Representative HYDE. Every one of the House and Senate conferees, Republican and Democrat, signed the conference report. That conference report includes significant portions of at least 25 legislative initiatives, all to be flushed down the drain by a Republican hold.

When people go home this year to campaign about why they want to stop drugs in their schools, why they want to fight terrorism, why they want their courts strengthened, why they want the Attorney General of the Department of Justice to be able to be strengthened in their fight, let them point out that the reason it was not done was a Republican Senator who wants to do it anonymously. They do not even want to step forward and say who he may be.

For too many years, Republican and Democrat administrations have allowed the Department of Justice to escape its accountability to the Senate and the House of Representatives and, through them, to the American people. Congress, the people's representatives, have a strong constitutional interest in restoring that accountability. The House has recognized this. It has done its job. We need to do ours. Senate Democrats are prepared to proceed. Senate Republicans apparently are not. So let me tell you some of the things that are in this bipartisan conference report.

First, the conference report provides Federal, State, and local governments with additional tools to battle terrorism. It fortifies our border security by authorizing over \$20 billion for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration. It authorizes funding for the Centers for Domestic Preparedness in Alabama, Texas, New Mexico, Louisiana, Nevada, Vermont, and Pennsylvania. It adds additional uses for grants from the Office