

and accountability of our democratic government. I thank Senator LEVIN who, once again, during his service here, has proved how valuable attention to detail is. I commend my colleague for raising it.

I thank the indulgence of the Chair. I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:38 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

EXECUTIVE SESSION

NOMINATION OF MICHAEL CHERTOFF TO BE SECRETARY OF HOMELAND SECURITY

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session and resume consideration of the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Michael Chertoff, of New Jersey, to be Secretary of Homeland Security.

The PRESIDING OFFICER. Who yields time?

The Senator from Maine.

Ms. COLLINS. Mr. President, I yield 5 minutes to the distinguished Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Maine for yielding me time.

I am in support of the President's nominee, Judge Michael Chertoff. He seems to have worked for almost every part of the Federal Government, including this body. I heard the Senator from Maine say that she had never seen a better witness before her committee.

As Secretary of Homeland Security, Judge Chertoff will play a very important and visible role in our everyday lives, protecting us from terrorism, but my purpose today is to highlight another job he has. He is also the chief immigration officer. As Secretary, he will oversee the Bureau of Citizenship and Immigration Services, the successor to the INS, which manages immigration in this country. This job of Judge Chertoff is not primarily about keeping people out of the United States; it is also about welcoming new Americans into the United States.

The numbers are down some since 2001, but as many as 1 million immi-

grants become new American citizens each year.

I have attended a number of the ceremonies which are held in Federal courthouses all over America every month to welcome and naturalize these new citizens. I was in Nashville in December when 50 or 60 people from all backgrounds were administered the oath of allegiance by Judge Echols. The oath requires each new American to renounce any old allegiance and swear a new one to the United States of America.

Each one of these new citizens has waited at least 5 years. They have learned English. They have learned something about U.S. history. They have proved they are of good character. Many new citizens have tears in their eyes as they recite that oath. It is an inspiring scene. Each of these new citizens brings a new background and cultural tradition to the rich fabric of American life. That increases our magnificent diversity, but diversity is not our most important characteristic.

Jerusalem is diverse. The Balkans are diverse. Iraq is diverse. A lot of the world is diverse. What is unique about the United States of America is that we take all of that diversity and make ourselves into one country. We are able to say we are all Americans. We do that because we unify it with principles and values in which we all believe: liberty, equality, rule of law. It also helps that we speak a common language. It is hard to be one people if we cannot talk with one another. Many of these new citizens and many others living in this country lack a solid grasp of our common language or a clear understanding of our history and civic culture. Without proficiency in English, our common language, and an understanding of our history and values, immigrants will find it difficult to integrate themselves into our American society.

So my hope today is that Judge Chertoff does a magnificent job in his role at preventing terrorism. My hope also is that he does a good job in keeping out of this country people who are not legally supposed to be here. But equally important is Secretary Chertoff's role in welcoming new citizens to this country, helping them learn our history, our common language—helping all of us remember those principles that unite us as one country. That is a part of the Department of Homeland Security. It is of increasing interest to Members of the Senate on both sides of the aisle, and I look forward to working with Judge Chertoff in this new role and I support his confirmation.

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

Ms. COLLINS. Mr. President, I yield 5 minutes to the distinguished Senator from Virginia and, from the minority's time, I will yield 10 minutes to the distinguished Senator from New York.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I am privileged to be the new boy on Senator COLLINS's committee. My mission is to try to achieve the smoothest working relationship between the Department of Defense, with which I have been privileged to work these 27 years in the Senate, and the distinguished new department and the committee for homeland defense over which my colleague presides as able chairman together with Senator LIEBERMAN.

Just a word or two I want to speak on Judge Chertoff. I, frankly, had not met him prior to the President's very wise selection of this able individual. I rise today to urge my colleagues to give the strongest endorsement possible to this nominee.

I started my career as a young lawyer, a prosecutor, but my first job out of law school was law clerk to a Federal circuit court judge, the same position that Judge Chertoff holds today. I recall all through law school and the early part of, I guess about 8 or 10 years that I practiced law, lawyers always thought: Maybe someday I could be a judge, a Federal judge. The whole bar looks up to the judicial branch, as they should. It is the third branch of our magnificent Republic. When an individual is selected by a President and confirmed in the Senate, he or she then dons that black robe, and it is a lifetime appointment.

I was privileged to observe the life of a Federal judge. My judge was E. Barrett Prettyman, and I had the privilege of standing on this very floor several years ago and recommending the Federal courthouse here in Washington be named for Judge Prettyman. I am always grateful to the Senate for its wisdom in accepting my recommendation. But I remember that judge so well. He had the strongest influence on my life. I aspired at one time to be a Federal judge, but I hastily tell my colleagues I am not sure I ever would have been qualified, for various reasons.

But when you accept that appointment you take that oath of office for life. That is why I, and I think most if not every one of my colleagues, spend so much time working with our Presidents to find the best qualified people to assume these important jobs in the Federal judiciary. But it is a lifetime appointment.

When I looked at Judge Chertoff in my office, we compared experiences. He was a law clerk on the Supreme Court, so he had gone through some of the similar experiences that I had as a lawyer, and also I was assistant U.S. attorney as was he. I said: You have to explain to me why you gave up a lifetime appointment to a position in which you can control your hours and largely control your vacations and have a magnificent family life and everything else to take on this enormous, uncertain challenge.

He looked me in the eye, and he said: In America, you have to step up and be counted when the President and the citizens of this Nation need you. I give

up this position with great reluctance, but I accept the next position and I will give it everything I have ever been taught in terms of how to do something for this country.

That deeply touched me, Madam Chairman. I feel very confident that, with the advice and consent of this august body, we will send forth an individual eminently qualified to handle this position, and one who will bring about the necessary security that this country deserves and needs and expects.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I also rise to speak in support of the nomination of Michael Chertoff.

Today we vote on one of the most important Cabinet positions in our Government, and that is Secretary of the Department of Homeland Security. New York, perhaps more than any other State in the Union, knows the need for a strong defense at home. Therefore, I take this vote very seriously. I have considered carefully Judge Michael Chertoff's background. I have considered his experience, and I met with him personally to express the needs and concerns of the citizens of New York and my own concerns about what we have and have not been doing when it comes to homeland security.

After careful review and after hearing his commitment to work with me and other Members of this body, I intend to vote in favor of Judge Chertoff's nomination for this vital post. It is clear, crystal clear, that Judge Chertoff has the intelligence and the skill to run this behemoth Department. There is no question about that. But what has really been missing from the Government is an advocate for funds and focus in homeland security that will protect New York and the rest of the country. Judge Chertoff assured me he would fight within the administration for resources that have been missing in homeland security.

It is no secret that, while we have given all the money it takes to fight the war on terror overseas, we have shortchanged the domestic war on terror at home. Program after program, which we all admit is necessary to defend us at home, is shortchanged when it comes to funding and focus.

The Department of Homeland Security was run by admirable people, but their constitution was such that when they went into the Oval Office, they didn't make much of a fight for the things that were necessary.

I asked Judge Chertoff about that when I met him. I said: I am sure you are not going to make a public fight, but are you privately, within the confines of the Oval Office, going to demand the funds that this Department needs to make us secure? He told me he would.

There is no doubt Judge Chertoff has been blessed with a brilliant mind, and he has formidable experience as a pros-

ecutor, as Chief of the Justice Department's Criminal Division, and more recently as an appellate judge. He now faces the toughest challenge of his thus far impressive career. He will be called upon to lead and manage a Department of 170,000 employees, forged out of 22 separate Government agencies, still not all working together. That is no small task.

Judge Chertoff will have to be smart, tough, dedicated, and savvy—but a keen mind and a strong work ethic will not be enough. As I have said, what has been missing from homeland security has been funds and focus. A color-coded warning system can have all the colors in the rainbow, but without adequate funding for vital programs and without a laser-like focus, we are not serving the people well. Judge Chertoff assured me he would fight hard for the funds and maintain a strong focus to maintain these programs at the Department if confirmed. If my reading of his character and personality is correct, he will make those fights inside the administration that have been lacking thus far.

Judge Chertoff, of course, will also have to commit himself to working with Members of Congress in a bipartisan way, so together we can best protect the homeland.

Unfortunately, as I said in the past, sometimes this administration has acted with too much secrecy and too often it has failed to consult Congress. Too often it behaved as if it has a monopoly on wisdom. I am optimistic that Judge Chertoff will, as he has assured me, work with us in a bipartisan way. I have also talked to him about the need for changing the funding formula so funds are not distributed simply as if they were dropped from an airplane, but go to the places of the greatest need.

I have told him it is unconscionable Wyoming gets more on a per-capita basis for homeland security than New York. He has told me that we have a real problem with the funding formula; he knows it has to be changed and he would work to change it.

I have also raised with Judge Chertoff the serious problems of staffing we have at the northern border with Canada. New York, of course, has a 300-mile such border. As of last year, we were short more than 1,400 Customs and Border Protection officers on that border. Judge Chertoff promised to make securing the northern border a priority, should he be confirmed by the Senate.

I also pressed Judge Chertoff on other matters, areas in which the Government should do more to protect the homeland. I discussed with him the creation of an assistant secretary for cybersecurity, something I have raised before, given reports of the mounting attacks on our computer systems. On these and on other matters, Judge Chertoff has shown a willingness to deliberate and be openminded and that means a lot in my book.

In conclusion, the task of the next Secretary will be difficult. The stakes couldn't be higher. Based on his record of achievement and my personal meetings with him, I have high hopes for Judge Chertoff. I hope and pray he lives up to those high hopes. I will vote yes on the nomination of Michael Chertoff as Secretary of the Department of Homeland Security.

Ms. COLLINS. Mr. President, I thank my colleague from New York for his excellent statement.

I see a very valuable member of the committee, the Senator from Hawaii, is here to speak. I am prepared to yield to him 10 minutes from the minority side.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise today to discuss the nomination of Judge Michael Chertoff to be Secretary of the Department of Homeland Security, DHS.

Since the inception of DHS in 2003, Secretary Tom Ridge has led the department with strength and grace. His tenure sets a high standard for future secretaries to meet. I would like to take this opportunity to thank Secretary Ridge for his hard work and dedication to his country.

As a member of the Homeland Security and Governmental Affairs Committee, I was able to discuss with Judge Chertoff his positions on issues such as the DHS personnel regulations, civil liberties, and bioterrorism. Judge Chertoff expressed his commitment to these issues and promised he would investigate and report back to the committee on a number of DHS policies of concern to me.

There were five main points that I raised with Judge Chertoff. First, I asked for his assurance that he will defend the Constitution to safeguard our civil liberties. The price of security should never erode our constitutional freedoms, which are essential to the preservation of this democracy. One specific activity I have concerns about is data mining, which could involve the collection of personal data that could violate an individual's privacy rights. Judge Chertoff affirmed his commitment to liberty and privacy, and I will continue to monitor DHS closely to ensure that he fulfills that commitment.

We also discussed the just-released personnel regulations covering the 180,000 men and women who staff DHS. To make these new regulations work, there must be significant and meaningful outreach to this dedicated workforce, their unions, and their managers. A well-managed organization values employee input and understands the important role employees play in protecting against mismanagement. To undermine opportunities for employees to voice concerns or even have notice of departmental changes unnecessarily harms workers.

My third concern is the protection of whistleblower rights in the department. Whistleblowers alert Congress

and the public to threats to health, waste of taxpayer money, and other information vital to running an effective and efficient government. I asked Judge Chertoff to pledge to protect whistleblowers and foster an open work environment that promotes the disclosure of Government mismanagement and Government illegality. In response, he promised "to support whistleblowers and to support candid assessments by employees when there are problems in the department." I am pleased he acknowledges the importance of whistleblowers to a Federal agency and has vowed to protect their rights. As ranking member of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, and the author of whistleblower protection legislation, I will be monitoring the department closely to ensure that Judge Chertoff follows through on this promise.

The fourth issue on which I asked for Judge Chertoff's commitment was bioterrorism and, more specifically, agriculture security. Since 2001, I have urged the administration to develop a coordinated response to bioterrorism and agroterrorism through legislation, which is critical to the health and safety of Americans.

Yesterday, I had the opportunity to participate in a gaming exercise called "Scarlet Shield" at the National Defense University that postulated a bioterrorist attack. This exercise brought home to me the need to do much more in ensuring an effective, coordinated response.

I will introduce shortly the Homeland Security Food and Agriculture Act of 2005, which will improve State, local, and tribal governments' ability to respond to an attack on the food supply and facilitate DHS's coordination with other Federal agencies with food and agriculture responsibilities. Judge Chertoff agrees with me that bioterrorism is one of the greatest threats our Nation currently faces, and as such I hope I can count on his support for my bill.

The final issue I discussed with the Judge is the security challenges for my home State of Hawaii, 2,500 miles from the West Coast. Being the only island State, Hawaii has been blessed with diverse and breathtaking geography and a unique culture. However, its geographic location poses challenges to securing the State from asymmetric threats. For example, when disaster strikes, Hawaii cannot call on neighboring States for assistance due to distance and time difference. Our eight inhabited islands must be self sufficient. For that reason, I have established positive working relationships with Secretary Ridge and senior policymakers from DHS as well as from PACOM and NORTHCOM to ensure that when national homeland security policies are being formulated, the needs of Hawaii are kept under consideration. Judge Chertoff promised to be

mindful of these unique needs and to continue the positive relationship Hawaii has enjoyed with Secretary Ridge.

I also note I am pleased Judge Chertoff has stressed the importance of close cooperation with Congress, particularly the Homeland Security and Governmental Affairs Committee, and has promised to provide the information we need to fulfill our oversight responsibilities.

With Judge Chertoff's assurances that he will protect civil liberties and whistleblower rights, work openly with Congress, and prioritize the other issues I have detailed today, I will support his nomination to be the Secretary of Homeland Security. I believe he has the professionalism and the commitment to serve the department well, and I hope we, in the Congress, will enjoy a long and productive relationship with him.

Thank you very much, Madam Chairman.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank my colleague from Hawaii for his excellent statement. He is a very valuable member of the committee, and I very much enjoy working with him.

I rise again today in support of the nomination of Judge Michael Chertoff to be the new Secretary of Homeland Security. As the Presiding Officer knows better than most, this is one of the most challenging and critical jobs in the entire Federal Government. Judge Chertoff is clearly the right person to take the helm of this Department, and it is past time to put him in that post.

The Committee on Homeland Security and Governmental Affairs held a nomination hearing for Judge Chertoff on February 2. It was a long and thorough hearing. Judge Chertoff answered every question posed to him fully and candidly. His responses to more than 250 written questions my committee presented to him were just as forthright. His nomination was endorsed by a unanimous vote.

I mention this because there should be no impression among our colleagues that our committee did not do a thorough job in questioning Judge Chertoff. To the contrary, he was subjected to hundreds of questions. He responded to every question posed to him at our committee's lengthy nomination hearing. And every member of the committee, on both sides of the aisle, had ample opportunity to question Judge Chertoff on whatever issues they wished to raise with him.

In fact, I am aware of no opposition to his nomination. Virtually the only issue we have debated during the course of these proceedings is one that I believe has no bearing whatsoever on Judge Chertoff's fitness to serve in this critical capacity. This issue is the demand, by a few of our colleagues, for information regarding the FBI's personnel working at Guantanamo Bay's detention facility and what informa-

tion they may have had about interrogation techniques used on detainees by Department of Defense personnel.

Let me make clear that all of us have concerns about the proper and humane treatment of our detainees. The distinguished chairman of the Armed Services Committee, who also serves on our committee, held a number of hearings to explore the treatment of detainees. It is my understanding that the Senate Intelligence Committee is also embarking on an investigation of the treatment of detainees by CIA personnel. So this is an issue. But the problem is, this is not an issue in which Judge Chertoff has been involved in setting policy. He is being asked for information he simply does not have.

At our committee's nomination hearing, Judge Chertoff was asked about these concerns by my distinguished colleague from Michigan, Senator LEVIN. Judge Chertoff's answer was unequivocal. Let me read it to you. He said:

I was not aware during my tenure at the Department of Justice that there were practices at Guantanamo, if there were practices at Guantanamo, that would be torture or anything even approaching torture.

He was not aware—not he did not recall not he was not sure; He was not aware. That is unambiguous testimony.

Our responsibility as Senators to advise and consent on executive branch nominees is a solemn one. It is one, as chairman of the committee, I take very seriously. If there were a good reason to delay consideration of a nomination in order to secure important information, then delay would be appropriate; it would be called for. But expecting a nominee to provide information that he has sworn under oath he does not know is not a good reason for delaying his nomination.

The questions about Judge Chertoff's knowledge of the treatment of detainees have been asked and answered, repeatedly. They have been asked in pre-hearing questions. They have been asked at the hearing. And they have been asked posthearing.

Judge Michael Chertoff is eminently qualified for this important position. In his distinguished career, he has established a strong reputation as a tough prosecutor. But he has established a reputation as a fierce defender of civil liberties. His position on the balance between these two critical roles was made clear in his testimony before the committee. He said:

I believe that we cannot live in liberty without security, but we would not want to live in security without liberty.

I cannot think of a more eloquent statement by a nominee, showing us—demonstrating beyond a doubt—he clearly understands that as he increases security for our Nation, he must be ever mindful of privacy rights, of civil liberties, of the very freedoms that define us as Americans, and that we cherish. Indeed, we would be handing the terrorists a victory if we so

compromised our freedoms in the name of security. Judge Chertoff understands that tension, that balance, the need for constant evaluation.

Judge Chertoff has also demonstrated a great ability to work with law enforcement agencies at all levels of Government. He has a keen understanding of the broad range of homeland security vulnerabilities faced by States and communities throughout the country.

When I have talked to law enforcement officials from Maine to California about Judge Chertoff, they have unanimously and enthusiastically embraced his nomination. They know he will listen to State and local law enforcement, and that he views them as partners in our fight to tighten and improve our homeland security.

I point out that Judge Chertoff was confirmed three times previously by this body. He was confirmed overwhelmingly by both sides of the aisle 2 years ago for one of the highest courts in the land. And now, having attained a lifelong appointment at the pinnacle of his legal profession, he nevertheless is giving that up. He is giving up a lifetime appointment on one of the most prestigious courts in the country to step forward to serve our Nation in one of the most difficult jobs imaginable, one of the most thankless jobs in the Federal Government.

I remind my colleagues of what he told our committee when I asked him why he was willing to give up that judgeship, why he was willing to make that sacrifice. He said—and his words are eloquent—

September 11th and the challenge it posed was, at least to my lights, the greatest challenge of my generation, and it was one that touched me both personally and in my work at the Department of Justice.

The call to serve in helping to protect America was the one call I could not decline.

We are fortunate to have an individual of Michael Chertoff's quality, with his commitment to public service, who is willing to answer the call of his country. I hope he will be unanimously confirmed later this afternoon.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I ask unanimous consent to speak as in morning business for up to 10 minutes and that this speech not interrupt the debate on the Chertoff nomination.

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

Ms. COLLINS. Mr. President, I will withhold that request so that the Senator from New Jersey, who has just come to the Chamber, may speak on the nomination. I yield him 10 minutes from the minority side.

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

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the chairman of the Governmental Affairs Committee for that courtesy. This is a task we are pleased to take on. For me, it is a moment of special significance. We are proud of the fact that Judge Michael Chertoff, the nominee to be Secretary of Homeland Security, is from New Jersey. I hope we are going to see a strong vote for his confirmation.

I thank our chairman and leader in the Governmental Affairs Committee for her persistence in moving some very important matters through that committee. She worked very hard at it. First it was the intelligence reform bill. While I was annoyed that I had to work Saturdays and other days, the fact is, without the diligence shown by the Senator from Maine, we would not have gotten it through. We were on the edge of the precipice when finally it passed, and I was enthusiastic to try to be of help there. So it is with this issue as well.

This is an important day for America. We all are concerned about the issue that haunts us constantly. Memories of 9/11 will never leave the minds of those who were alive or who study American history in the future. It was a terrible day for America. We live every day with the remnants of that reminder.

This morning, in the Commerce Committee on which I sit, we had a discussion on aviation safety and baggage security requirements. I came down this morning from New Jersey and, because of some security involvements, was unable to catch two airplanes. But it had to be done. It was not that I was particularly suspicious looking, but there was a line to get through, and that is what happens. So we are always reminded. Go into a building, popular places, and you cannot go into those places, wherever they are, whether they are concerts or whether they are educational forums, if it has any volume of attendance, you will invariably see the security process at play. We are worried about our families and our society, how we function.

Judge Chertoff has been selected to be the next Secretary for Homeland Security. It is fair to say that Secretary Ridge did a good job in trying to amalgamate all these parts into an organization with 180,000 people. It is an enormous task. Fortunately, the foresight to name someone such as Michael Chertoff to this post did present an unusual and appropriate candidate. He received undergraduate law degrees with honor from Harvard University. After law school, he clerked on the Second Circuit Court of Appeals. Following that clerkship, he went on to serve as a clerk for a great New Jerseyan, Supreme Court Justice William J. Brennan.

In 1990, Michael Chertoff, in his meteoric rise to the top because of his ability, became the U.S. attorney for the District of New Jersey. During that

tenure, less than 4 years, he was so aggressive in tackling organized crime, public corruption, health care, and bank fraud, with great success in making the perpetrators of these crimes pay the price and get out of the community orbit so we could approach things correctly and honestly.

Michael Chertoff also played a critical role in helping the New Jersey State legislature investigate racial profiling in our State. It was a blight on our community. Driving while Black should not be a crime, and we identified that very clearly. As a matter of fact, oddly enough, the present attorney general of the State of New Jersey, a fellow named Peter Harvey, distinguished attorney and outstanding member of the Governor's cabinet, was stopped on one of our highways. He had pulled into a restaurant parking lot, and a policeman came over and asked to check his license and to inspect his car for no reason other than the fact that he was Black. There was no other reason. He had no suspicion surrounding his presence. Yet our attorney general, then a lawyer, was stopped because of color. That should not be a crime. Thanks in part to Judge Chertoff's efforts, the State legislature passed a bill to ban racial profiling. That prompted me to introduce the first bill in the U.S. Senate to address this issue. The results have been excellent.

Judge Chertoff now serves on the prestigious U.S. Court of Appeals for the Third Circuit. A good measure of his commitment to public service, one he has been questioned about publicly in place after place, including our committee, is the question as to why he would give up a lifetime tenure on the second highest court in the land to accept a call to duty. We hope this tenure will be better, but it will have to be earned every day of his career.

The mission of the Department of Homeland Security is critical to our country and to my State of New Jersey. On September 11, 2001, 700 of the almost 3,000 people who perished that day came from the State of New Jersey. There is hardly anyone in our State who didn't know someone or some family member of someone who died that day in the World Trade Center.

I was a commissioner of the Port Authority of New York and New Jersey when I was elected to the Senate, and those Trade Center buildings were kind of a business home for me.

From the location where I live now, I could see the silhouette and the trade centers always as a landmark. It was a pleasure to get up in the morning and see the sun coming over the tops of those buildings. Yes, when we saw what happened that day, smoke rising from the World Trade Center buildings, as each one collapsed in a crush of flames and debris, that can never be forgotten. The New York/New Jersey region bore the brunt of those attacks on that terrible day.

It continues to be identified, by the way, by the FBI as the most at-risk area for terrorist attack. The 2 miles that go from Newark Liberty Airport to the New York/New Jersey harbor are said by the FBI to be the most inviting targets for terrorists. Judge Chertoff understands this. When Senator CORZINE and I talked with Michael Chertoff, we didn't have to remind him about what that area looks like, what that stretch of land is like that could be so inviting to terrorists. I am confident Judge Chertoff will work to target homeland security grants to areas where the actual risk and threat of terrorism are the greatest.

This is not just about New York and New Jersey. There are many high-risk States—some are colored red in the political description that we use today, and some are blue. Examples: Texas, Florida, California, Georgia, Illinois, Virginia—the list goes on of States where there are inviting targets for terrorists. These high-risk States are not getting enough funding because, under current law, 40 percent of all homeland security grants—over \$1 billion each year—is given to each and every State regardless of risk and threat. That doesn't make sense.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator has used his 10 minutes.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that I be permitted 5 more minutes.

The PRESIDING OFFICER. Is there objection?

Ms. COLLINS. Mr. President, I will make clear that it is coming from the Democrats' time.

Mr. LAUTENBERG. We are glad to take that responsibility. I may ask for a minute or two more.

The PRESIDING OFFICER. The Senator is recognized for 5 more minutes.

Mr. LAUTENBERG. Mr. President, the 9/11 Commission report stated:

Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities. Federal homeland security assistance should not remain a program for general revenue sharing.

The 9/11 Commission correctly understood that homeland security is too important to be caught up in pork-barrel politics. That is why Senator CORZINE and I introduced a bill last week, S. 308, requiring that all homeland security grants for terrorism prevention and preparedness be based on relative risks, threats, and vulnerabilities. I hope my colleagues will see that that is in the national interest and support that legislation. I know Judge Chertoff understands that problem. He is a highly intelligent, competent, and dedicated public servant who has compiled a number of impressive accomplishments in all three branches of the Federal Government. I ask my colleagues to vote to confirm him.

I would like to add a word. Right now, we are talking about whether the minority is obstructing progress on dif-

ferent issues—Social Security and other legislation that is before us that needs attention. Here is an example of where we can arrive at a consensus view with dispatch—get it done. We know Judge Chertoff is an excellent candidate, but that is not to say there may not be a vote against him. There were votes against the confirmation of Secretary Condoleezza Rice. There was a difference of view. It was the same thing with Mr. Gonzales. But it reflects the fact that the minority is represented. There were many people from the Democratic side who voted for Secretary Rice and for Attorney General Gonzales. But why is there a move underway—I use this opportunity to say this—to undercut the voice of the minority? It was said by our leader here that 48 million people voted Democrat in the last Presidential election. Do we want to say that those voices should not be heard? Never.

Mr. President, I know you and our chairperson, Senator COLLINS, were elected with good support from your constituents. Does that free you from representing the part of the constituency that didn't vote for you? Not at all. We have to recognize that schemes that would deprive the minority from registering their point of view are against the Constitution. It is against the fabric of our democratic society to say if you didn't vote for us, we are going to nail you; you are not going to have your view; you are obstructionists. That is not right. Here we have a chance once again to express some bipartisanship by voting for an outstanding candidate to be the next Secretary of Homeland Security.

I yield the floor.

Mr. JEFFORDS. Mr. President, We are here today discussing the nomination of Judge Michael Chertoff to be the next Secretary of the United States Department of Homeland Security.

Let me begin by thanking Secretary Ridge for all he did in leading the department through its creation and start-up. It was a difficult job and the Nation owes him a debt of gratitude for tackling this difficult task.

I opposed the creation of the Department of Homeland Security, in part, because I was concerned that by combining disparate areas of the Federal Government we could create more problems than benefits. Several recent reports from the Government Accountability Office have shown that this is a valid concern.

The next Secretary of the Homeland Security Department will need to focus time and energy on ensuring that the various divisions within the department become integrated. A separate and divided Department of Homeland Security cannot work to increase our national security. Our best chance for preventing another terrorist attack relies on a coordinated and well run agency. If this does not occur, I fear that my original concern regarding the creation of this entity will be realized.

Judge Chertoff has an impressive resume and, in fact, has already been

confirmed by the Senate for several positions. His experience includes serving as a Federal appellate court judge, United States Attorney, and head of the Criminal Division at the United States Department of Justice. However, questions have been raised about the potential involvement of Judge Chertoff in the prison abuse scandals, an issue that was pivotal in my opposition to Judge Gonzales being confirmed as the United States Attorney General.

Senators LEVIN and LIEBERMAN have been working to determine whether Judge Chertoff had any knowledge about the scandal, and they deserve our profound thanks. However, as in too many cases, this administration has made a decision to keep much of the information from the public. The citizens of the United States deserve honesty and openness from the government.

The information that has been revealed shows that Judge Chertoff had no knowledge or involvement in the torture scandal. I must make a decision based on the record I have in front of me, not on the possibility of the record I do not know. Reviewing this record leads me to believe that Judge Chertoff would be capable of performing the duties of Secretary of the Department of Homeland Security, and I will thus support his confirmation to that position.

It is my hope that Judge Chertoff will complete the work that Secretary Ridge began and create an integrated Department of Homeland Security. I also hope that Judge Chertoff will be able to lead by example and create the open environment at the Department of Homeland Security that my constituents and the citizens of this Nation deserve and expect.

It will take many hours of hard work and it will not be easy. I wish him the best of luck in accomplishing the task.

Mr. HATCH. Mr. President, today I rise in strong support of the nomination of Judge Michael Chertoff to become Secretary of Homeland Security.

Voting in favor of Judge Chertoff and commending him on his remarkable accomplishments is beginning to become a habit for us.

At the beginning of President Bush's first term, Judge Chertoff was nominated to become Assistant Attorney General for the Criminal Division. To this position, he brought years of experience as a Federal prosecutor in New York and a highly successful term as the U.S. attorney for the District of New Jersey.

As a prosecutor, Judge Chertoff handled a wide variety of complex crimes that included successfully prosecuting a RICO murder case involving the third-ranking member of the Genovese La Cosa Nostra Family and others. The principal defendants were convicted of conspiring to murder John Gotti and murdering a mob associate. They each received 75 to 80 year prison terms.

He also successfully prosecuted the Mafia Commission Case, which charged

the bosses of all five New York La Cosa Nostra Families with operating a national commission through a pattern of racketeering acts such as extortion, loan sharking, and the murders of a mafia boss and two associates.

Upon his confirmation, Mr. Chertoff ran the Criminal Division of the Department of Justice during the trying days after September 11. As Senator COLLINS stated:

since 9/11, Judge Chertoff has established himself as a leading expert on the legal and national security issues surrounding the war on terror.

After this period, in which I worked closely with the Criminal Division of the Justice Department to formulate the PATRIOT ACT, Judge Chertoff was nominated to the third Circuit and was confirmed by a vote of 88 to 1.

As we all know, becoming a judge on the 3rd Circuit is a lifetime appointment and the culminating achievement of many outstanding legal careers. Few leave the bench before retirement. However, Judge Chertoff is not a man who will shirk from his duty. His nation called and asked him to sacrifice. He answered that call and stood up to be counted during a period of war.

This is true not only for the time that he spent affiliated with the Justice Department but in his everyday practice. For example, Judge Chertoff served as special counsel to the New Jersey Senate Judiciary Committee in its investigation of racial profiling.

Under his counsel, the committee held nine hearings examining racial profiling allegations, concluding that the former attorney general had misled the committee and had attempted to cover up the extent of racial profiling in New Jersey from the U.S. Department of Justice.

After a convicted rapist was mistakenly released from prison, Mr. Chertoff again served as special counsel for the New Jersey Senate Judiciary Committee during its hearings into the application of Megan's Law, which requires State correction officials to notify prosecutors 90 days prior to the release of a sex offender, and the reasons why it was not being systematically employed by the State.

Mr. Chertoff also represented three indigent defendants on death row in Arkansas through a program operated by the NAACP Legal Defense Fund. The death sentences of all three defendants were overturned on the appeal that he handled.

I understand that Judge Chertoff received the unanimous approval of the Homeland Security and Governmental Affairs Committee, with one member voting "present." I believe that this is not only a reflection on the judge's credentials but a realization that securing the homeland is not a partisan issue, but a commitment by the Government to its people that we will find the best leaders to defend our Nation. Judge Chertoff time and time again has set the standard by which others will have to follow.

Mr. President, it has been my privilege to know Judge Chertoff for a number of years and I can honestly say that the President has made an inspired decision in this nomination.

Mr. SALAZAR. Mr. President, I rise today to discuss the nomination of Judge Michael Chertoff to be our Nation's second Homeland Security Secretary.

Our next Homeland Security chief will face a number of urgent challenges. I believe the most pressing of those will be better coordinating our Federal, State and local homeland security personnel.

When I was Colorado's attorney general, I started a new effort to bring district attorneys, police departments and sheriffs together to foster interagency cooperation. That was tough, but it allowed us to coordinate and fund better law enforcement training, and better prosecute gang violence, fight senior financial fraud, establish school hotlines and many other vital efforts to fight crime that knows no jurisdictional boundaries.

The challenge for DHS is, of course, even larger.

Unfortunately, 3 years after 9/11 there is a huge gap between Washington and our first responders on the ground. In his fiscal year 2006 budget, the President proposed consolidating and reducing funding for State and local heroes.

At a time when our law enforcement agencies are being asked to do more with less, the President apparently believes they should have even less. The President's budget for next year eliminates funding for new hires under the COPS grants, which have helped to put 1,289 additional officers on the streets in Colorado. The President's budget also calls for a 24 percent cut in homeland security grants to States and a complete elimination of grants to rural fire fighters.

At the same time, the Homeland Security grant money that is available is not flowing effectively to State and local agencies. Police, fire and emergency medical departments are not getting the help they need. Worse yet, critical anti-terrorism intelligence is not getting to the law enforcement personnel on the ground who can act on it.

I met with Mike Chertoff and he promised me that he would work to better coordinate Federal, State and local agencies. I appreciated his candor in our meeting, but I am very disappointed to see his unwillingness to respond to a series of very straightforward questions posed by Senators Levin and Lieberman.

Here is why this matters: we need a straight-shooting and straight-talking person in this job. Judge Chertoff will face the awesome task of wrangling the 180,000 employees and 22 agencies that form the Department of Homeland Security. Secretary Tom Ridge started the process of cutting the bureaucratic red tape and integrating the department. DHS took a number of steps, in-

cluding establishing an Operational Integration Staff, but a great deal is still left to do.

Judge Chertoff has experience moving unwieldy bureaucracy in times of crisis. As Assistant Attorney General of the Criminal Division of the Department of Justice from 2001-2003, Chertoff shared information and coordinated antiterrorism efforts not only across DOJ, but also with DHS and foreign law enforcement. Chertoff also pushed resources to the field where they were needed most.

Chertoff was essentially the Nation's attorney as it prosecuted the war on terrorism. I know a little about this. As Colorado's former top attorney, I can tell my colleagues that one needs a good lawyer to fight crime and prevent terror.

Chertoff will also have to balance the need to fight terrorism with the need to preserve our freedom.

This is a difficult balance to achieve. In the last few years, we have faced some difficult choices. The administration has detained terrorism suspects for long periods without access to an attorney. They have tried to use military tribunals instead of civilian courts. And worst of all, the administration's uneven record on adherence to the Geneva Convention and on the use of torture is an affront to our American ideals.

Chertoff has expressed his belief that torture is wrong. He expressed his philosophy during his confirmation hearing: "We cannot live in liberty without security, but we would not want to live in security without liberty."

Judge Chertoff has said all the right things about preserving civil liberties. But we will face numerous threats to our security over the next 4 years, and we will be faced with even tougher choices. It is my sincere hope that Chertoff will do a better job than his predecessors have done in allowing us to live with both security and liberty.

What strikes me most about Mike Chertoff is his commitment to public service. Two years ago, Chertoff was confirmed for a lifetime appointment to the 3rd U.S. Circuit Court of Appeals. Chertoff could easily have kept that seat forever, but he stepped down from that secure job to face another political gauntlet. In short, when duty called, Judge Chertoff answered.

You could not ask for a tougher job in Washington than Homeland Security Secretary. I am hopeful Judge Chertoff is the right person for the job.

Mr. CORZINE. Mr. President, I rise today in strong support of the confirmation of Michael Chertoff to be Secretary of Homeland Security. He is an extraordinary professional and a remarkably talented lawyer. He is highly intelligent, honorable, and impartial. He is also a straight shooter, which is exactly what we need right now in this position. He is also a personal friend.

Mr. Chertoff has impeccable credentials—not the least of which is being a native New Jerseyan. He attended Harvard College and Harvard Law School,

where he was editor of the Harvard Law Review. He then served as a Supreme Court law clerk. In private practice and public service, he developed a reputation as a brilliant, tough, fair, and truly world class litigator, and earned the respect of his peers and adversaries. Indeed, one New Jersey paper has even suggested he might be New Jersey's "Lawyer Laureate."

In recent years, Judge Chertoff has served as Assistant Attorney General for the Criminal Division and circuit judge for the Third Circuit. In each of these capacities and throughout his career, he has served our Nation exceptionally well. So when Judge Chertoff told me recently that this position, as Secretary of Homeland Security, is the most important task he has ever undertaken in his public career, I took notice. Given his commitment to public service and the distinguished results of his remarkable career, this statement speaks for itself.

I wish to emphasize one particular aspect of Judge Chertoff's career: his role in helping the New Jersey State legislature investigate racial profiling. As special counsel to the State senate Judiciary Committee, he led the committee probe into how top State officials handled racial profiling by the State Police. His work was bipartisan, objective, balanced, and thoroughly professional, and helped expose the fact that for too long, State authorities were aware that statistics showed minority motorists were being treated unequally by some law enforcement officials, and yet ignored the problem. This landmark racial profiling investigation demonstrated Judge Chertoff's ability to balance the State's responsibility to provide for the public safety with protecting our citizens' civil liberties.

Judge Chertoff is uniquely positioned to undertake the enormous challenges that come with the position of Secretary of Homeland Security. Particularly important to the citizens of New Jersey is his understanding of the critical importance of allocating our homeland security resources to those areas of the country where the risks and vulnerabilities are greatest.

New Jersey is on the front lines of terrorism. We lost 700 people on September 11, 2001. Two of the 9/11 terrorists were based in New Jersey, and the anthrax that hit this institution originated in New Jersey. The Post Office in Hamilton, NJ, where the anthrax was sent, has taken years to clean up and will finally reopen next week. The costs are expected to be \$72 million for decontamination and \$27 million for the refurbishment of the facility.

Newark Liberty Airport, and Port Newark, and the Ports of Philadelphia and Camden are critical vulnerabilities. New Jersey is home to rail lines, bridges, and tunnels to New York City, as well as chemical plants and nuclear facilities. Atlantic City has the second highest concentration of casinos in the country, and between

tourists and those who work there, is visited by as many as 300,000 people.

Wall Street and other financial services firms house important front and back office operations, including clearance and settlement services, and other operations essential to the functioning of America's capital markets in Newark, Jersey City, and Hoboken. And, last summer, Newark was one of three locations including New York City and Washington, DC—that was put on Orange Alert for a possible terrorist attack as intelligence suggested that the Prudential building in downtown Newark could be a target.

Yet despite these growing threats to New Jersey from anthrax to the Orange Alert, and the ever-expanding costs associated with protecting the most densely populated State in the country—remarkably homeland security grants to New Jersey were cut in 2005.

Funding was reduced from \$93 million in 2004 to \$61 million in 2005. Newark will see a 17-percent reduction in funds, from \$14.9 million to \$12.4 million. And, incredibly, Jersey City's homeland security funds will drop by 60 percent, from \$17 million in 2004 to \$6.7 million in 2005.

These cuts leave New Jersey home of countless companies and people who keep our economic engine moving; home of one of the most active and exposed ports in the country; home of one of the busiest airports in America; home of our Nation's new Homeland Security Secretary—36th in the Nation in per capita homeland security funding.

I was pleased that the President's budget called for an allocation of homeland security funding based on risk and vulnerability. This common-sense approach mirrors the recommendations of the 9/11 Commission.

Senator FRANK LAUTENBERG and I have introduced legislation that would require that homeland security funding be allocated along these lines. This bill grants the Department of Homeland Security the authority it needs to keep us safe and will allow Michael Chertoff to be an outstanding Secretary of Homeland Security.

Judge Chertoff also understands the critical importance of protecting our chemical facilities. Only a week ago, the former Deputy Homeland Security Advisor to the President testified to this committee that industrial chemicals are "acutely vulnerable and almost uniquely dangerous," presenting a "mass-casualty terrorist potential rivaled only by improvised nuclear devices, certain acts of bioterrorism, and the collapse of large, occupied buildings." He added that chemical plant security "should be the highest critical infrastructure protection priority for the Department of Homeland Security in the next two years."

There are other critical issues that the nominee will face and that I am confident he is prepared to take on. Our rail lines are woefully unprotected and recent accidents have dem-

onstrated the risk that rail transport of toxic chemicals could be attacked by terrorists. There is important work remaining at TSA, where airport screening is far from complete and where too little attention has been paid to ground transportation.

And the Department of Homeland Security has not yet adequately confronted the vulnerabilities of our ports. The checklist is long and the issues complex. And in my view, Judge Chertoff is the best person to address them.

One of the critical issues to be addressed by the new Secretary of Homeland Security will be civil liberties. I strongly believe that we as a nation can be both secure and free. Given Judge Chertoff's work on racial profiling in New Jersey, I am confident that he will pursue law enforcement strategies that are both effective and unbiased. His stated commitment to respecting recent Supreme Court decisions on detainees assures me that he will always pursue terrorists within the context of our laws and treaty obligations. And his public as well as private calls for a new approach to detainees is indicative of a thoughtful and open-minded professional.

While I fully understand the concerns raised by my colleague from Michigan, I am disappointed that it delayed this confirmation vote. The Congress has an obligation to oversee how this administration is treating detainees, in Guantanamo and around the world. Access to FBI memoranda on this topic are critical to this oversight. But this particular document has nothing to do with Judge Chertoff's qualifications for this critical position. Indeed, I have confidence that Judge Chertoff—who has called for more open discussion on the topic of detention—will work closely with Congress so that we can come to a full understanding of what has happened and where we go from here.

No one knows what the future may bring. The terrorist threat shifts, and we are constantly learning about new vulnerabilities. At this critical moment, I believe that Judge Chertoff has the kind of commitment, intellect, and imagination that we need as someone who is focused on keeping us safe, as someone who understands that homeland security means identifying the greatest risks and vulnerabilities and making them a priority, as someone who recognizes that, in protecting ourselves, we cannot sacrifice our basic principles and values. Mr. President, I am confident that Michael Chertoff is that person.

Mr. DURBIN. Mr. President, I rise today in support of the nomination of Judge Michael Chertoff to be the new Secretary for the Department of Homeland Security.

Make no mistake, I believe the challenges facing Judge Chertoff at the 2-year-old Department are monumental. They include negotiating turf battles with other powerful Cabinet Secretaries and ensuring that 22 formerly

disparate Federal agencies, with a combined workforce of 180,000 employees, work together under one central structure. In addition, Judge Chertoff will be responsible for protecting our Nation's critical infrastructure and for improving information sharing among law enforcement agencies—without intruding unnecessarily on individual privacy rights. It is a daunting assignment, but I believe Judge Chertoff is up to it.

When Senator OBAMA and I met with Judge Chertoff last week, we discussed several issues of concern to us, and Judge Chertoff assured us that he will address these issues. Among my key concerns are the new personnel rules for Department of Homeland Security employees. I believe the new rules are far too restrictive when it comes to collective bargaining, pay negotiations, and adjudicating grievances. The situation at DHS has become even more important since the Bush administration announced its intention to give agencies across the Federal Government the option of creating similar human resource policies. Judge Chertoff said he would sit down with the workers who will be affected by the rules to listen to their concerns and suggestions. It is important that he do so. As Judge Chertoff told Senator OBAMA and me:

It's important to have a happy and satisfied workforce. This is not going to work if people in the department feel like they're being wronged.

Another issue Judge Chertoff promised to look into is the effort to integrate the separate fingerprint data bases maintained by the Department of Homeland Security and the FBI. Merging these two systems into a single, integrated system is not simply a good idea, it is a congressional mandate. Yet, a recent report by the Justice Department's Inspector General concluded that the efforts to achieve a fully integrated biometric fingerprint ID system have stalled. As one who has pushed for such a system, I am deeply troubled by that assessment. More than three years after 9/11, it is unacceptable that this critical improvement to our homeland security still had not been accomplished. Judge Chertoff said the American people "would go ballistic if we can't get things to mesh." He is right and the American people have every right to be angry. This must get done. I take Judge Chertoff at his word when he says he will make development of an integrated biometric fingerprint ID system a priority.

Judge Chertoff also promised to look into another possible threat to our homeland security, and that is the apparent ease with which an ordinary citizen can obtain an airline pilot's uniform. This threat was documented recently by a Chicago TV reporter. Astonishingly, the reporter found that he could purchase an authentic pilot's uniform online—with no identification—and the uniform would be deliv-

ered to his doorstep in 48 hours. How can this happen in a post-9/11 world? Senator OBAMA and I have asked the Senate Homeland Security and Governmental Affairs Committee and the Transportation Security Administration to answer that question. We will be looking for answers.

I look forward to working with Judge Chertoff on several issues of particular importance to Illinois. Among them is a Microbial Risk Assessment Center, which has been proposed by the University of Chicago and would serve as the national clearinghouse to assess risks from anthrax, smallpox, plague, and other possible bioterror threats.

In addition, the city of Chicago has developed a state-of-the-art command center where personnel from the city's police, fire, and rescue departments and representatives of the city's business community work together in one room to monitor the city and, if necessary, respond jointly to disasters. I believe this command center could serve as a national model, and I encourage Judge Chertoff to examine its structure and successes.

My decision to support Judge Chertoff is the result of serious deliberation. While I am impressed by his record and his openness, I also have some concerns about the role Judge Chertoff played in developing certain administration policies while he served as the head of the Justice Department's Criminal Division. In that capacity, Judge Chertoff helped to craft high-profile initiatives that explicitly targeted Arabs and Muslims and resulted in the detention of thousands of people. In the aftermath of the 9/11 terrorist attacks, the Justice Department rounded up at least 1,200 immigrants, the vast majority of whom were Arab or Muslim. The Justice Department's Inspector General found that none of these detainees—not one—was charged with a terrorist-related offense, and that the decision to detain them was "extremely attenuated" from the 9/11 investigation. The Inspector General also found that detainees were subjected to harsh conditions of confinement and that some were subjected to "a pattern of physical and verbal abuse."

Judge Chertoff also was tangentially involved in the Justice Department's efforts to legalize abusive interrogation tactics. He reviewed the infamous Justice Department "torture memo" and provided advice on complying with the antitorture statute, but he told me that he did not provide advice on the legality of any specific interrogation methods.

The Justice Department's "torture memo" narrowly and, I believe, incorrectly redefined torture as limited only to abuse that causes pain equivalent to organ failure or death, and concluded that the antitorture statute does not apply to interrogations conducted under the President's so-called Commander in Chief authority.

This tortured effort to justify torture helped to create a permissive environ-

ment that made it more likely that abuses of detainees would take place and made it possible for the horrors we have since learned about at Guantanamo Bay, Cuba and the Abu Ghraib prison in Iraq. What happened in these places, I believe, has damaged our image and called into question our moral authority in some places and it has increased—not diminished—the dangers our troops and our citizens face in this age of terrorism.

Unlike many other administration officials, however, Judge Chertoff has acknowledged that the Government made mistakes in the aftermath of 9/11. He told me that he opposes ethnic and religious profiling and he is committed to treating all immigrants fairly and to complying with all laws regarding the humane treatment of detainees.

I take him at his word. I will expect Judge Chertoff, as Secretary of Homeland Security, to balance America's need for security and our respect for civil rights and our heritage as a nation of immigrants. There are practical reasons, in addition to the legal reasons, for seeking such balance. Detaining large numbers of Arab and Muslim immigrants involves a massive investment of law enforcement resources with little no return, and it creates fear and resentment of law enforcement in exactly the immigrant communities whose cooperation we need to defeat terrorism.

Finally, Judge Chertoff assured me that he will maintain open lines of communication with Congress so that Congress can fulfill its constitutional requirement to oversee whether, and how well, the Department is implementing the laws this body passes.

For all of these reasons and because of his record of public service and his candor during this confirmation process, I will support Judge Chertoff's nomination to be America's next Secretary of Homeland Security. I look forward to working with him to make America safer in ways that are consistent with our national values and heritage, and I wish Judge Chertoff the best of luck as he begins his important new assignment.

THE PRESIDING OFFICER. The Senator from New Mexico.

MR. DOMENICI. Mr. President, this Senator from New Mexico has known Mr. Chertoff for a long time. I have been familiar with him professionally, primarily when he was legal counsel for a committee on which I served. In that capacity, I got to know his professional qualities, his intellect, his care in interpreting both the law and facts, and I am absolutely positive that he is going to make a superb head for this very complicated Department of Homeland Security.

Mr. Chertoff is a lawyer by trade and a judge by promotion within the profession of advocacy. Now, regardless of the profession or experiences of the person nominated to this position, there might have been some who asked: Why not some other particular area of

expertise? That could be asked in this case. But I am quite sure that when one looks at the myriad of problems addressed by and the kind of intellect, commitment, and most of all, integrity that Judge Chertoff has, it is clear that he is going to do a superb job on behalf of our country and the safety of our homeland.

My compliments to the President for sending this nomination to the committee, headed by Senator COLLINS, that reported him out quickly, and to the Senate for overwhelmingly voting for him today. I salute Judge Chertoff and wish him the best. I hope he is able to handle this job with the same kind of excellence that he has handled all the other jobs we have given him.

He has plenty of help, which he will need. This is not a job he can do alone. It is a very big agency, and I hope everybody who works there will be part of his team as he works to make Homeland Security operate in a way that is efficient and good for our country and for our people.

I yield the floor.

Mrs. CLINTON. Mr. President, when the time comes I intend to vote in favor of Judge Chertoff's nomination to be Secretary of Homeland Security. There is no position in government of greater importance to the security of our country and of my home State of New York. And so I am glad that the Senate has agreed to devote some time to a discussion of the important issues that the next Secretary of Homeland Security will face.

Let me say at the outset that I have some serious concerns about this nomination. These concerns have nothing to do with Judge Chertoff's personal abilities: his professional and intellectual qualifications are beyond question, as is his commitment to public service. Rather, my concerns are based on the misguided and constitutionally infirm policies that have been drafted by the Department of Justice and implemented by the Administration in its prosecution of the war on terror and in the conflicts in Afghanistan and Iraq. Judge Chertoff was a senior DOJ official at the time that these policies were created. Because he is being nominated to a position for which respect for Constitutional and treaty obligations is especially important, his role in the formation of these policies is therefore worthy of careful scrutiny.

My primary concern relates to those policies that have undercut and placed our men and women in uniform in greater danger and diminished our standing in the international community. I feel a particular personal obligation as a member of the Armed Services Committee to do my utmost to ensure that our government does not do anything that unnecessarily puts our troops in harm's way, that diminishes our standing among our allies, or that blurs the values that distinguish us from our depraved and nihilistic enemies.

The August 1, 2002 memo from the Department of Justice's Office of Legal

Counsel, with its absurdly narrow definition of torture, is the most shocking and well-known example of the administration's attempt to radically weaken this country's commitment to treat all prisoners and detainees humanely and in accordance with international agreements. Another oft-cited example is Attorney General Gonzales' January 2002 advice to President Bush that the "war on terrorism" offers a "new paradigm [that] renders obsolete" the Geneva Convention's protections.

I am satisfied by Judge Chertoff's testimony that, as Assistant Attorney General for the Criminal Division, he did not provide legal advice that strayed below the standard that is expected from senior members of the Justice Department. He testified that executive branch officials sought his views on the practical application of laws prohibiting torture and on specific techniques. And he testified that torture is illegal and wrong and that he does not believe that the definition of torture in the August 1, 2002 OLC memo is broad enough. He testified that he told executive branch officials to "be sure that you have good faith and you've operated diligently to make sure what you are considering doing is well within the law." Regarding specific techniques, Judge Chertoff testified that, "I was not prepared to say to people, to approve things in advance, or to give people speculative opinions that they might later take as some kind of a license to do something."

These responses suggest that Judge Chertoff appreciates the importance of upholding America's long tradition of treating prisoners humanely, and of respecting international agreements that protect our men and women in uniform as well as our standing in the international community. While I would have preferred that Judge Chertoff had argued his point to the administration more forcefully, I am satisfied that he did not actively promote these wrong-headed, immoral, and counterproductive policies.

Another important concern arises from the Justice Department's treatment of more than 750 aliens detained immediately following the attacks of September 11. The department's own inspector general released a report in 2003 that acknowledged the "difficult circumstances" in which the department found itself, but concluded there were "significant problems in the way that the September 11 detainees were treated." Among those problems were significant delays in the FBI's clearance process, hindrances in access to legal counsel, and verbal and physical abuse of detainees. The report specifically finds that the Justice Department, including Judge Chertoff, was aware of the FBI's clearance problems at the time. In fact, Judge Chertoff testified that he inquired with the FBI about the clearance delays, but the FBI's resources were "stretched." The inspector general found that the Justice Department should have done

more once it learned of the detainee-related problems.

When asked about this report at his confirmation hearing, Judge Chertoff acknowledged that there were "imperfections" in the executive branch's response. He testified that he was unaware at the time of the hindrances in detainees' access to counsel, that he was unaware of the verbal and physical abuse, and that such mistreatment is inappropriate and should not have happened. He also stated the importance of learning from experience.

I am disappointed that Judge Chertoff did not express greater regret for the department's role in the mistreatment of detainees, and that he did not testify in detail as to the status of the implementation of the inspector general's recommended 21 reforms. Nonetheless, his responses to this line of questioning are not, in my view, sufficient to oppose his nomination. I hope that Judge Chertoff will bring to bear the lessons we have learned from this experience and work to ensure appropriate reforms are successfully carried out.

After careful consideration, I am satisfied by Judge Chertoff's answers to the Senate Homeland Security and Governmental Affairs Committee regarding his conduct at the Justice Department. Despite the egregious missteps the department made during his tenure, I do not believe that his performance there disqualifies him from serving as the next Secretary of the Department of Homeland Security. And in view of his testimony and of his exceptional record during his short time on the Federal bench, I believe that Judge Chertoff understands that the next Secretary of Homeland Security must be both unflagging in his efforts to protect us from terrorist attack and steadfast in his respect for our Constitutional order.

I also believe that Judge Chertoff has a good understanding of the issues and challenges facing the Department of Homeland Security. Perhaps the biggest challenge awaiting him is the taming of the enormous bureaucratic tangle that is the current department. If confirmed, Judge Chertoff will become the head of a department that was created via the integration of 22 separate agencies and 180,000 employees. These agencies and employees engage in a wide range of activities related to securing the homeland, and they need a steady and firm hand on the tiller. They also need a creative leader who can cut through bureaucratic entanglement and get things done. As Secretary, Judge Chertoff's central task will be setting priorities and getting a vast bureaucracy to work efficiently and in a unified fashion.

I am hopeful Judge Chertoff's well-documented intellectual abilities and his long experience as a public servant will serve him well as he moves from the role of Federal judge to the head of such a large and demanding Department. He pledged at his confirmation

hearing to work “tirelessly” to safeguard the nation. I hope he follows through on that pledge in a variety of areas of critical importance. He will need to devote substantial energy and political capital if he is to help this still nascent Department develop to its full potential and render all Americans as safe and as secure in their liberties as possible.

I am encouraged that Judge Chertoff and I agree on a number of specific challenges facing the Department of Homeland Security. One of these issues—Federal funding formulas for state and local preparedness—is essential to protecting the homeland. I have repeatedly called upon the administration and my colleagues to implement threat-based homeland security funding, so that homeland security resources go to the states and areas where they are needed most. I have introduced legislation in this regard and even developed a specific homeland security formula for administration officials to consider.

The latest iteration of that proposal is contained in my Domestic Defense Fund Act of 2005, which I introduced on the first legislative day of this Congress. Modeled on the Community Development Block Grant program, the Domestic Defense Fund of 2005 provides \$7 billion in annual funding to local communities, States, and first responders. The act requires that all of that funding be allocated using threat, risk, and vulnerability-based criteria that homeland security experts—including the Homeland Security Independent Task Force of the Council on Foreign Relations, chaired by former Senators Gary Hart and Warren Rudman, and the National Commission on Terrorist Attacks Upon the United States—have long recommended.

I was heartened to hear Judge Chertoff testify at his confirmation hearing, that “I think we have to have a formula for funding and a formula for lending assistance to State and local governments across the board that takes account of the reality of vulnerabilities and risks and making sure that we’re making a fair allocation.” Judge Chertoff also stated this view when I met with him. His unequivocal support for threat- and vulnerability-based funding is important for New York, and for the nation.

Another issue on which Judge Chertoff and I agree is the need for greater sharing of terrorist-related information between and among Federal, State, and local government agencies. In the immediate aftermath of the 9/11 terrorist attacks, I worked with a number of my colleagues in the Senate on a bi-partisan basis in focusing on this need. As I noted in my remarks on the passage of the Intelligence Reform and Terrorism Prevention Act of 2004, the sharing of critical intelligence information is vitally important if we are to win the War against terrorism. We need to ensure that our front line soldiers in the war against terrorism here

at home—our local communities and our first responders—are as informed as possible about any possible threat so that they can do the best job possible to protect all Americans. It is vital for New York City and other local communities across New York State and the Nation to receive accurate and timely information from the department when a potential threat emerges. It is equally important that local communities on the front lines serve as valuable sources of information for the Federal Government.

I was pleased to learn that Judge Chertoff testified at his confirmation hearing that his personal experiences as an Assistant United States Attorney, a United States Attorney and as head of the Criminal Division on September 11, give him a thorough appreciation and respect for State and local perspectives. In his testimony, he described “negotiating cooperation with our state and local government officials” as one of “the central elements of the war against terrorism. . . .” He repeatedly referred to the need to work in partnership with State and local government.

I could not agree more. The Federal Government cannot, and should not, go it alone when it comes to securing the homeland. States and local communities must be full partners. Much more needs to be done, but Judge Chertoff’s testimony demonstrates that he understands the importance of this area as a key to homeland security.

I also find it encouraging that Judge Chertoff testified that he is “acutely aware” of the importance of allocating resources to secure our ports. Needless to say, having a secretary of homeland security who understands the importance of the Port of New York and New Jersey is likely to be a good thing for New Yorkers, and for the entire country.

There has been little evidence to date that administration is interested in using a threat-based formula for allocating resources. Indeed, in Fiscal Year 2004, when the Administration had the opportunity to employ such a formula in allocating funds under the State Homeland Security Grant Program, SHGP, and the Law Enforcement Terrorism Prevention, LETP, grant program, it affirmatively chose not to do so, despite pleas from me and many members of Congress on both sides of the aisle. Again in Fiscal Year 2005, there was no significant effort on the part of the administration to use a threat-based formula.

I wrote President Bush imploring him to work with the House and Senate leadership on the issue of homeland security funding, but language was inserted in the Fiscal Year 2005 Homeland Security Appropriations Act to require that SHGP and LETP funds be allocated in that fiscal year as the administration chose to allocate funds in Fiscal Year 2004, which, unfortunately, was on the basis of population alone.

Every homeland security expert I know has said that this makes no sense. If the terrorists are looking at things such as the presence and vulnerability of critical infrastructures as well as population and population densities, so should we.

This year, the administration is again talking a good game on homeland security grant formulas. The Fiscal Year 2006 budget request calls for more than \$1 billion in grants to States for the purpose of enhancing capabilities to prevent, deter, respond to and recover from acts of terrorism, to be allocated by the Secretary of Homeland Security “based on risks, threats, vulnerabilities, and unmet essential capabilities,” with a 0.25 percent State minimum. In addition, more than \$1 billion would go for grants to urban areas, for the same purpose, and on the same basis—minus, of course, a State minimum.

This is a step in the right direction, but we need to allocate much more funding for this purpose. Whether through direct funding—which I continue to believe is the best way to disburse homeland security funding to many communities—or funding that is sent to the states and passed through to local communities, the Federal Government should be disbursing the homeland security state and local funds to communities according to a threat- and vulnerability-based formula.

In addition, my Domestic Defense Fund Act makes it explicit that the funding provided for in my proposed legislation will not supplant or be in lieu of funding for traditional first responders programs, such as the Community Oriented Policing Services, COPS, program and the Assistance to Fire Fighters, FIRE, Act program. These Federal programs have proven successful in helping first responders perform traditional functions, such as fighting crime and responding to fires.

Unfortunately, the Fiscal Year 2006 budget request seeks to cut or eliminate a number of these essential first responder programs. Under the President’s proposed budget, funding for the COPS program is reduced from \$379 million to \$118 million nationally, which comes on top of previous years’ cuts for the COPS program, which once received more than \$1.5 billion in funding. And absolutely no funding is proposed for the COPS Universal Hiring Program, the COPS MORE program, COPS in Schools program, or the COPS Interoperable Communications Technology Program.

The Fiscal Year 2006 budget request also proposes no funding for the Edward Byrne Memorial Justice Assistance Grant program, named after a New York City police officer killed in the line of duty, and the Local Law Enforcement Block Grant program. These programs in the past have provided states and local governments with Federal funds to support efforts to reduce crime and increase public safety, such

as enhancing security measures around schools, establishing or supporting drug courts, and preventing violent and/or drug-related crime.

I find that shameful, especially as our fire fighters, police officers, emergency service workers and other first responders continue to be on the front lines of our nation's homeland defense. It is imperative that Judge Chertoff, if confirmed, stand by his philosophy of risk-based allocation and appreciation for the role of state and local partners when he prepares his department's budget in coming years.

In fact, the outcome of a number of homeland security imperatives will depend to a significant extent on Judge Chertoff's willingness to fight hard during the budget process. A good example of this is the addition of new border patrol agents mandated in the recently enacted Intelligence Reform and Terrorism Prevention Act of 2004. If the goals of this legislation are realized, the security of the northern border would be improved, a result I have worked for since 2001. Among many provisions, the act calls for an increase of at least 10,000 border patrol agents from Fiscal Years 2006 through 2010, many of whom will be dedicated specifically to our northern border. And yet the FY06 budget request did not come close to seeking the 2,000 new border patrol agents authorized for this year. Judge Chertoff must be willing to fight hard for full funding of this and other programs essential to the department's mission.

I appreciate that Judge Chertoff understands the critical importance of securing chemical facilities. There are hundreds of chemical plants in the United States where a terrorist attack could threaten more than 100,000 Americans with exposure to toxic chemicals. This is a homeland security vulnerability that has been recognized by many, yet we still have no mandatory Federal standards for chemical plants, and the Department of Homeland Security lacks authority to put such standards in place. Until Congress provides the department with such authority, Americans will continue to rely on voluntary security measures at chemical plants, which have been repeatedly shown to be lax.

I believe that the best solution to this problem would be to enact the Chemical Security Act that I have sponsored with Senator CORZINE. However, in order to pass this or other chemical plant security legislation, we will need stronger support from the administration and from the Secretary of Homeland Security than we have had in the past. That is why I was encouraged by Judge Chertoff's testimony that he is aware of the significant risk of that sector based on his personal experience. He also testified that "the Federal Government needs to be able to use a whole range of tools to bring the industry up to an appropriate standard" and that "the President has indicated that he supports, if nec-

essary, the use of authorities to require chemical companies to come up to certain standards, with appropriate penalties if they don't do so."

Thus, on balance, my personal exchange with Judge Chertoff—and the testimony he gave during his confirmation hearing—speak of his commitment to threat- and vulnerability-based funding, his keen awareness of other vital homeland security issues for New Yorkers, and his intent to work tirelessly. He is from New Jersey and knows the homeland security needs of the region from personal experience. Ultimately, his roots in the region, his personal experiences, and his expressions of commitment to policies that are essential to the security of New Yorkers, are decisive factors in my decision to vote to confirm.

One of the lessons we have learned since September 11 is that constant vigilance is required of the Congress; oversight and accountability must be our watch words. Oversight requires us to demand that the rule of law be respected by the executive branch, and that we do not countenance the flouting of the law or of treaties. It requires us to hold the executive branch truly accountable for its actions. If we have learned anything since that September day in 2001, particularly with respect to this administration, it is the timeless truth that "eternal vigilance is the price of liberty."

It has been said before, but it bears repeating—our Nation faces a new kind of challenge to our way of life. I have no doubt we will overcome this challenge, but it will only be overcome through maintaining and strengthening our civil society and our commitment to being a force for decency and respect for law in the world.

Judge Chertoff testified that, as Secretary, he will "be mindful of the need to reconcile the imperatives of security with the preservation of liberty and privacy." I agree that one of the central dilemmas of our time is balancing security with liberty and privacy. As the 9/11 Commission said, "Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend." I believe that Judge Chertoff is professionally qualified to be Secretary of Homeland Security, and that he understands and respects the values that the Secretary works to defend. Therefore, I will be voting in favor of his confirmation.

Mr. CORNYN. Mr. President, I thank Judge Michael Chertoff for having the courage to take on the challenging tasks of leading the Department of Homeland Security. He is an ideal nominee for this position, and I look forward to working with him and other department officials to ensure that we have the best possible border and port security, cyber security, and efficient distribution of DHS resources and personnel.

There are several issues that we need to address in the short term, particu-

larly in the areas of state homeland security grants and cyber security.

For the last 4 years, the Department of Homeland Security has provided billions of dollars throughout the country to prevent, prepare for, and respond to acts of terrorism. There are several effective first responder grant programs that have raised our nation's overall level of preparedness and ability to react to all manner of disasters.

However, many of the funds distributed to states and local Governments have been allocated by formulas that fail to take into consideration actual needs or are not based on real risks of terrorism. It is time that Congress re-examine the methods of distributing these critical preparedness funds. In order to adequately secure the nation against terrorist attacks, the Federal Government must strategically distribute grants to states and local governments in an efficient manner and to the places where they will be most effective. Congress must take the lead in reforming the system for distributing these funds based on actual threats and vulnerabilities and enable Federal agencies to target critical gaps in state and local terrorism prevention and preparedness capabilities.

We know that terrorists seek to strike the U.S. where it will do the most damage, either in terms of American lives or our country's economy and vital assets. Of course, we should make sure that our population centers are protected, but that does not mean that funds should only go to urban areas. When it comes to protecting our economy and vulnerable critical infrastructure, we need to be mindful of protecting all the vital components of these systems. Taking the U.S. food supply as an example, this would mean securing both up and down stream components, from agriculture and food production systems to the ports that ship products in and out of the country.

By targeting terrorism preparedness funds to the communities and components of the economy that are most at risk, the whole country benefits.

And looking beyond traditional terrorism preparedness, in this age of the Internet and globally interconnected computer systems, securing the Nation's borders no longer includes just land, air and sea, but also cyberspace. As a result, it is critical that the federal government provide strong leadership in cyber security by securing its computer systems and adequately safeguarding key components in our national infrastructure—including the systems the country relies upon that link water, utility, communications, transportation and financial networks.

I am encouraged that Judge Chertoff, has committed to closely examining the agency's role in cyber security to ensure it is doing everything possible in this critical mission. Toward that goal, we should elevate the issue of cyber security within the agency and create the position of Assistant Secretary of Cyber Security.

We made important strides toward making America safer with the recently enacted Intelligence Reform Bill, but we cannot claim to have finished the job of improving our intelligence capability and homeland security until we deal comprehensively with the need for enhanced cyber security. An organized cyber attack would disrupt national security, halt the production and distribution of needed goods and services, and threaten the very fabric of our Nation's economy.

Unfortunately, cyber security is an area that tends to be overlooked in the discussion of homeland security. First responders to a cyber security attack on America have far different needs and functions than traditional first responders. They require a clear and visible leadership within DHS to organize and maintain our security. Given the dynamic and ever-expanding threats in the area of cyber security, an Assistant Secretary of Cyber Security will provide DHS with an enhanced ability to interact, influence, and coordinate targeted cyber security missions across all areas of our infrastructure.

The effort to secure our nation will not be complete until all aspects of vulnerability to terrorists are recognized. This is true for all our national borders; on land, air, sea, and cyber space. Recognizing that threat is an important step, but we must now make every effort to prevent the threat from becoming a crippling reality.

I am proud to vote for Judge Chertoff. He has well-deserved bipartisan support, and I am confident he will be able to do the job. As Assistant Attorney General for the Criminal Division of the U.S. Department of Justice, he worked tirelessly following the September 11th attacks, prosecuting those whose specific goal was to kill innocent citizens in New York, Virginia and elsewhere in this country. I look forward to working alongside him on these critical issues, and I am sure he will bring courage and commitment to the serious tasks at hand.

Ms. CANTWELL. Mr. President, the Constitution provides the Senate with a responsibility to evaluate Presidential nominations. This is a responsibility that I take very seriously because the Senate's role ensures strong leadership at the very highest levels of the Federal Government.

Today, the Senate considers the nomination of Judge Michael Chertoff to be Secretary of the Department of Homeland Security. Leading the Department of Homeland Security is not an easy job, and requires an individual with tireless dedication, unending perseverance, and strong leadership.

The Senate Committee on Homeland Security and Governmental Affairs, led by Chairman COLLINS and ranking member LIEBERMAN, conducted a thorough examination of Judge Chertoff's record, and I support the committee's recommendation to endorse his nomination.

The Secretary of the Department of Homeland Security is tasked with a se-

rious responsibility—leading our country's unified effort to secure America and protect the homeland from terrorist attacks. To take this job, Judge Chertoff has walked away from a lifetime appointment to third circuit, a position for which I supported him. I commend him for embracing this new responsibility and answering the call of the President and of all American citizens.

In the wake of the attacks on September 11, our Nation was confronted with a challenge to revamp our homeland security posture and adopt a strategic plan to defend America from global threat of terrorism. Many of our efforts to strengthen homeland security have been successful, and were long overdue. But there are critical networks and infrastructure that need additional attention to reduce their vulnerability to terrorist attacks, such as: our food supply, telecommunications and financial networks, rail transportation infrastructure, and chemical facilities.

In Washington State, we have looked to the Department of Homeland Security to assist us in preparing our first responders and providing them with the financial, training, and information resources they need to meet new security requirements. I would urge Judge Chertoff to continue to work closely with local first responders from my state who are on the front lines of ensuring that Washington's ports, borders, and critical infrastructure are secure.

I am confident that Judge Chertoff will be confirmed today. I am eager to begin working with him to continue to improve the security of Washington State and all of America's homeland.

Mr. LEAHY. Mr. President, today the Senate will complete the consideration of the nomination of Michael Chertoff to head the Department of Homeland Security.

Judge Chertoff currently serves as a Federal judge on the Court of Appeals for the Third Circuit. This is a lifetime appointment that he has held for a relatively short time and that he will be abandoning to return to executive branch service. I helped expedite and voted in favor of Judge Chertoff when his nomination to the third circuit came to the Senate in 2003.

Before that he was the Assistant Attorney General in charge of the Criminal Division at the Department of Justice. I helped expedite and voted in favor of that nomination in 2001.

I have worked with Mike Chertoff and appreciate his background as a prosecutor. He is very capable. He works hard. What one sees when you consider his career is that much of the time he acts as a consummate professional in our best tradition. Although there have been times when he has shown partisanship in an apparent effort to "earn his spurs" with those on the extreme right, it is my hope and expectation that he will bring his better angels with him as he embarks on

his new role as Secretary of the Office of Homeland Security. That is not a position that needs or deserves even a hint of partisanship. Indeed, one of the moments that marred Secretary Ridge's tenure was when he stepped out of character to make a blatantly partisan pitch during the run-up to the recent presidential election.

I was astonished when President Bush announced that he had chosen Bernie Kerik to replace Secretary Ridge. When newspapers and news magazines began looking at that nomination, it became apparent that the vetting of that nomination was shoddy and that Mr. Kerik was an unacceptable choice on a number of grounds. That misadventure cost us time and led to Judge Chertoff's nomination being made later than it should have been by the administration.

The Senate has expedited consideration of this nomination. In what I hope is a sign of better days to come and of increased responsiveness, I note that this nominee has responded in kind by seeking to answer in one day's time a letter I sent to him. I appreciate that kind of responsiveness.

In light of his effort, I will excuse his missing the point in failing to respond directly to my first question. I raised with the nominee an aspect of his conversations with representatives of the intelligence community while he was serving as a principal law enforcer charged with prosecutions under the anti-torture law. My question to Judge Chertoff was an opportunity for him to reflect on the inappropriateness of the chief prosecutor advising lawyers for possible investigatory targets regarding how he would apply the law and what might provide a safe harbor when it came to torture.

I commend Senator LEVIN for trying to get to the substance of those conversations during confirmation hearings. Sadly but all too characteristically, the Bush administration has refused to provide him or the Senate with the relevant materials in this regard. I am, likewise, concerned that Mr. Chertoff was not more assertive during discussions with the Office of Legal Counsel as it headed down the wrong road in trying artificially to narrow the definition of torture to provide latitude that contributed to widespread international scandals in our wrongful treatment of prisoners. I wish someone within the Bush administration at the time had stood up for the rule of law and had succeeded in derailing the search directed by Judge Gonzales to create loopholes in our law.

I appreciate that Judge Chertoff has committed to implementing the recommendations of the inspector general with respect to preserving the civil rights of those detained by the Government in his answer to my second question. That inquiry derived from his testimony to the Judiciary Committee in November 2001.

Finally, I asked a series of questions about the so-called "wall" between law

enforcement investigations and intelligence. The 9/11 Commission report went a long way toward dismantling the myth that former Attorney General Ashcroft had tried to perpetuate. I recall when even President Bush upbraided Attorney General Ashcroft following his assault upon Commissioner Gorelick at the 9/11 Commission hearings.

I pointed out that during the Clinton administration almost one year before September 11, 2001, the Department of Justice Office of Legal Counsel had issued an official memorandum noting the Government's position on "Sharing Title III Electronic Surveillance Material with the Intelligence Community," which concluded that law enforcement officials may share surveillance information with the intelligence community to obtain assistance in preventing, investigating or prosecuting a crime, or where the information was of overriding importance to national security or foreign relations.

As Judge Chertoff recalls, it was Attorney General Ashcroft who adopted measures on January 21, 2000, and it was the memorandum issued by Deputy Attorney General Thompson on August 6, 2001, that governed information sharing in the days leading to the disaster that was September 11. Indeed, Judge Chertoff notes: "When it was deemed to be appropriate, additional procedures were put in place in specific cases, or in sets of related cases." He proceeds to concede that without any change in the law, in the time between September 11 and enactment of the USA PATRIOT Act: "With court approval, some of these procedures were modified between 9/11 and October 26, 2001, the effective date of the USA PATRIOT Act."

The 9/11 Commission established during its investigation that in the days and months before September 11, 2001, information sharing requirements and procedures were misunderstood and misapplied at the Department of Justice. I appreciated Judge Chertoff's offering a glimpse into the inner workings of the Ashcroft Justice Department in the days that led up to 9/11 when he noted that there was a "vigorous internal debate about the appropriate procedures for sharing information collected in foreign intelligence and counterterrorism investigations with criminal agents and prosecutors." That "internal debate" was unresolved on September 11, 2001, when terrorists struck in New York and at the Pentagon and were thwarted in the sky over Pennsylvania.

When the Justice Department came forward to work with the Senate in the weeks following the attacks, I worked with Mr. Chertoff to ensure that law enforcement and intelligence efforts were better coordinated, and I urged him, the Attorney General and the Director of the FBI to change the culture that had led to destructive and dysfunctional hoarding of essential security information.

I ask unanimous consent that copies of my letter to Judge Chertoff and his response be printed in the RECORD.

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

U.S. SENATE,

COMMITTEE ON THE JUDICIARY,

Washington, DC, February 7, 2005.

Hon. MICHAEL CHERTOFF,

United States Court of Appeals for the Third Circuit, Martin Luther King, Jr. Federal Building & U.S. Courthouse, Walnut Street, Newark, NJ.

DEAR JUDGE CHERTOFF: Congratulations on your nomination to head the Department of Homeland Security. While I am somewhat surprised to be considering your nomination to an Executive Branch position so soon after your confirmation to the Federal bench, I respect your commitment to public service. The work of the Department of Homeland Security is crucial to the safety and security of the American people, and there are lingering problems in integrating all of the elements of the department and in making them as effective as we need them to be. Managing DHS is one of the toughest assignments in Washington, and I admire and appreciate your willingness to take it. I feel confident that the vetting problems we saw with respect to the Kerik nomination will not plague yours.

It is regrettable that the Judiciary Committee has not held a hearing and was not even allowed to participate in a hearing on your nomination. Much of the work of the Department of Homeland Security remains of importance and interest to the Judiciary Committee and within its jurisdiction and expertise.

In connection with our committee's oversight responsibilities as the Senate prepares to debate and vote on your nomination, I would ask you to respond regarding three principal matters.

First, at your confirmation hearing last week, you acknowledged that while serving as head of the Criminal Division, you consulted with lawyers for the intelligence community regarding specific interrogation techniques. I ask that you reflect upon your conduct in which you were apparently discussing the possible application of the criminal anti-torture statute with representatives of agencies whose personnel might be involved in conduct that you might later be called upon to evaluate for prosecution. In hindsight, should you not have refused to engage in those discussions, or referred the agencies to a non-prosecutorial office of the government such as the Office of Legal Counsel?

Second, in your testimony before the Senate Judiciary Committee in November 2001, you stated that the Department of Justice, in its investigation into the September 11 attacks, acted in complete accordance with all statutory and constitutional requirements in place before or after the attack. With what has come to light since then about the treatment of detainees, including the Inspector General's highly critical June 2003 report on that topic, what would you now say about government practices in the months following the 9/11 attacks and how they went wrong? Is it not also true, as indicated in the 9/11 Commission report that information sharing legal requirements and procedures were misunderstood and misapplied before September 11, 2001? Before September 11, 2001, what did you do to improve information sharing between the law enforcement and intelligence communities?

Third, what were the policies and practices of the Department of Justice with respect to information sharing between law enforce-

ment and intelligence functions during the period that you headed the Criminal Division? In particular, what were those policies and practices before September 11, 2001, and how if at all did they change between September 11, 2001, and October 26, 2001, when the USA PATRIOT Act was signed into law? Is it not true that in 2000 the Department's Office of Legal Counsel issued an official memorandum on "Sharing Title III Electronic Surveillance Material with the Intelligence Community," which concluded that law enforcement officials may share surveillance information with the intelligence community to obtain assistance in preventing, investigating or prosecuting a crime, or where the information was of overriding importance to national security or foreign relations?

I look forward to your prompt response.

Sincerely,

PATRICK LEAHY,
Ranking Democratic Member.

POST-HEARING QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR PATRICK LEAHY FOR THE NOMINATION HEARING OF JUDGE MICHAEL CHERTOFF TO BE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY

Question: First, at your confirmation hearing last week, you acknowledged that while serving as head of the Criminal Division, you consulted with lawyers for the intelligence community regarding specific interrogation techniques.

I ask that you reflect upon your conduct in which you were apparently discussing the possible application of the criminal anti-torture statute with representatives of agencies whose personnel might be involved in conduct that you might later be called upon to evaluate for prosecution. In hindsight, should you not have refused to engage in those discussions, or referred the agencies to a non-prosecutorial office of the government such as the Office of Legal Counsel?

Answer: As I stated at my confirmation hearing, I was asked to provide my views to other attorneys on how the anti-torture statute would be applied by a prosecutor. My position in response was not to give advance, speculative advice about what could be done; rather, it was to make sure that the lawyers understood that what is likely to be critical to a prosecutor evaluating a potential charge is the honest, good-faith assessment by any interrogators of the effects of what they are doing and how those effects measure against the statute.

I believe it would have been a dereliction of my duty to refuse to assist the Office of Legal Counsel and lawyers from other government agencies. The Office of Legal Counsel, a component separate and distinct from the Criminal Division, was the primary Department of Justice Component responsible for the guidance on the meaning of the anti-torture statute. I understand that, depending on the legal question under analysis, OLC or lawyers from other government agencies on occasion solicit the views of components of the Department that have expertise in the matter under consideration. I believe it was appropriate for the Criminal Division to offer general guidance on application of the law.

Question: Second, in your testimony before the Senate Judiciary Committee in November 2001, you stated that the Department of Justice, in its investigation into the September 11 attacks, acted in complete accordance with all statutory and constitutional requirements in place before or after the attack.

With what has come to light since then about the treatment of detainees, including the Inspector General's highly critical June

2003 report on that topic, what would you now say about government practices in the months following the 9/11 attacks and how they went wrong?

Answer: As explained in the OIG report, I believed that if individuals linked through investigation to the hijackers or terrorism were chargeable with violations of our criminal laws or immigration laws, as enacted by Congress, the government should seek detention in accordance with the applicable law while we were investigating to determine if the charged individuals posed an actual threat. In these discussions, I repeatedly emphasized that this policy applied only to those properly chargeable with breaking the law and that detention should be sought consistent with relevant law and regulations.

My understanding is that those detained in the course of the 9/11 investigation were detained with an individualized predicate, meaning, a criminal charge, an immigration violation, or a judicially-issued material witness warrant. There was a legal basis for each detention. The top priority of the Justice Department was preventing another terrorist attack against the American people, and the lawful detention of individuals who were known to have violated immigration laws—like the September 11 attackers themselves—was a reasonable policy.

I acknowledge that the policy could have been implemented better and it will be in the future. I believe that the Government faced an unparalleled challenge on September 11: How to prevent devastating terrorist attacks that might arise at any moment from al-Qaeda “sleepers” who had been specifically programmed to disguise themselves, blend into ordinary life, and to exploit existing networks for obtaining phony documents and other means of support. That challenge was compounded by the fact that the September 11 attacks physically crippled the FBI and U.S. Attorney’s Office in New York (which were the repositories of much of the Department’s antiterrorism expertise at the time) and impaired communication between New York and Washington for a period of time. Furthermore, because the 9/11 conspirators operated in cities and towns across the country, the 9/11 investigation necessitated following and analyzing many thousands of leads generated by numerous FBI field offices, some of which had little previous experience in conducting terrorism investigations. Looking for a terrorist under these circumstances was akin to looking for a needle in a nationwide haystack, but with the needle masquerading as a stalk of hay.

The OIG report identifies concerns that FBI investigative delays or lack of precision in turn led to delays in processing of immigration detainees. In the aftermath of the surprise attack on September 11, the FBI labored under physical and resource constraints in the face of an urgent investigative demand of unprecedented scope. Now, additional resources, training enhancements and reorganizations within the Department and the FBI, as well as the Intelligence Reform Bill—are designed to—and should continue to—increase FBI expertise and capability and streamline coordination, so that in any future nationwide terrorism investigation delays and imprecision will be minimized. Furthermore, I believe that the FBI and DHS should and will continue to build upon their experience to develop and firmly establish appropriate protocols for classifying subjects of terrorism investigations at the appropriate level of concern, setting up appropriate deadlines for notification that a particular detainee is or is no longer a terrorism risk; sharing information between law enforcement and immigration agencies; and finalizing a crisis management plan that clearly delineates each agencies

procedures and responsibilities in the event of a national emergency. These enhancements would further reduce the potential for impinging on civil liberties.

Finally, so far as the OIG report identified acts of misconduct by guards at detention facilities these were, of course, wrong, and steps should be taken to assure no such behavior occurs in the future. I believe that DHS and DOJ have implemented some of these proposals and, if confirmed, I will work to further increase their successful implementation.

Question: Is it not also true, as indicated in the 9/11 Commission report that information sharing legal requirements and procedures were misunderstood and misapplied before September 11, 2001? Before September 11, 2001, what did you do to improve information sharing between the law enforcement and intelligence communities?

Answer: I began at the Criminal Division on approximately June 1, 2001. My activities date from that point.

Prior to 9/11, the Department—including the Criminal Division under my leadership—was engaged in a vigorous internal debate about the appropriate procedures for sharing information collected in foreign counterintelligence and counterterrorism investigations with criminal agents and prosecutors, and the proper role for prosecutors in such investigations. I understand that the procedures in effect on 9/11 were those that had been adopted by the Attorney General on July 19, 1995 (including an annex concerning the Southern District of New York), the interim measures approved by the Attorney General on January 21, 2000, and the memorandum issued by the Deputy Attorney General on August 6, 2001.

Question: Third, what were the policies and practices of the Department of Justice with respect to information sharing between law enforcement and intelligence functions during the period that you headed the Criminal Division? In particular, what were those policies and practices before September 11, 2001, and how if at all did they change between September 11, 2001, and October 26, 2001, when the USA PATRIOT Act was signed into law? Is it not true that in 2000 the Department’s Office of Legal Counsel issued an official memorandum on “Sharing Title III Electronic Surveillance Material with the Intelligence Community,” which concluded that law enforcement officials may share surveillance information with the intelligence community to obtain assistance in preventing, investigating or prosecuting a crime, or where the information was of overriding importance to national security or foreign relations?

Answer: As discussed above, prior to 9/11, the Department—including the Criminal Division under my leadership—was engaged in a vigorous internal debate about the appropriate procedures for sharing information collected in foreign counterintelligence and counterterrorism investigations with criminal agents and prosecutors, and the proper role for prosecutors in such investigations. The procedures in effect on 9/11 were those that had been adopted by the Attorney General on July 19, 1995 (including an annex concerning the Southern District of New York), the interim measures approved by the Attorney General on January 21, 2000, and the memorandum issued by the Deputy Attorney General on August 6, 2001. Where it was deemed to be appropriate, additional procedures were put in place in specific cases, or in sets of related cases. With court approval, some of these procedures were modified between 9/11 and October 26, 2001, the effective date of the USA PATRIOT Act. On March 6, 2002, the Attorney General adopted new information sharing procedures that replaced

all of the above-referenced procedures. The March 6th procedures, however, did not take full effect until the Foreign Intelligence Court of Review issued a ruling regarding these matters on November 18, 2002.

Mr. LEAHY. Heading the Department of Homeland Security is a position that may be one of the more difficult assignments in Washington and in Government. The work of the Department of Homeland Security, DHS, is crucial to the safety and security of the American people. There remain many problems in integrating the elements of the Department and in making them as effective as we need them to be. I remain concerned with a number of issues in need of greater attention at DHS and much more significant support from the highest levels of the Bush administration. Working with Secretary Chertoff, maybe we will be able to get that attention and support.

The Bush administration has failed to provide the necessary assistance for first responders throughout our Nation. As the costs borne by law enforcement agencies across the country continue to rise, we need to increase the partnership help offered to our nation’s first responders. Instead, in the President’s new budget, he has proposed cutting overall funding for first responders by \$670 million. These cuts target vital emergency services affecting every State, regardless of size or population. The President also proposed cutting the all-State minimum for first-responder grants from 0.75 percent to 0.25 percent. That new formula would result in the loss of funds to police, firefighters and emergency rescue squads in dozens of states from coast to coast. In Vermont, this would mean a loss of at least \$10 million dollars in fiscal year 2006—grant funds that are used to provide security services along thousands of miles of our border with three states. Vermont’s border with Canada spans approximately 95 miles, but the Swanton Border Patrol is charged with protecting 24,000 square miles, which includes not only the entire State of Vermont, but also numerous counties in New York and New Hampshire. Within this area, the Swanton Border Patrol is required to patrol more than 261 miles of International Boundary.

Our approach to port security is also insufficient. More than 90 percent of the world’s trade is moved in cargo containers. The Government Accountability Office has found that the information that the Bureau of Customs and Border Patrol uses to determine which cargo should be searched is “one of the least reliable or useful for targeting purposes.” In addition, our government has been slow to install radiation detection portals at our ports, leaving us vulnerable to the smuggling of a nuclear or radiological weapon.

Mass Transit Measures Idle. Our mass transit systems are similarly at risk. While we spent about \$4.5 billion on aviation security last year, we devoted only \$65 million to rail security, even though five times as many people take trains as planes every day. The

Madrid bombing vividly demonstrated the potential vulnerability of mass transit, and I am concerned that the administration is not responding effectively enough to this threat. This needs to be a higher priority than the administration has made it. The TSA has been slow in developing security procedures at port and rail facilities around the country, and our transit and freight transportation systems remain at risk. The recent DHS budget submission cuts funding for the following essential security programs: port security grants, port security incident response, intercity bus grants, container threat assessments, nuclear detection and monitoring, hazmat truck tracking and training, and rail security inspectors.

Air Security Concerns Linger. Despite the dedicated resources to aviation security, problems remain. There have been several reorganizations of the TSA's airport screeners program, but reports from the GAO and the DHS Office of Inspector General suggest that the screening programs for baggage and passengers at our nation's airports are not as effective as they should be. We need to ensure that the \$4,734,784,000 budget request for aviation security this year is spent wisely and properly.

Secretary Chertoff, if he is confirmed, will oversee both the enforcement of our immigration laws and the granting of immigration benefits. We face a number of important choices on immigration in the coming years, and I hope that he will play a constructive role.

I urge him to support the bipartisan efforts in Congress to improve the H-2B visa program, so we can meet the needs of small employers around our nation who depend on seasonal immigrant labor to stay in business. I hope he will support the bipartisan "AgJOBS" bill, which provides relief both to the agriculture industry and to the immigrant farm workers who make up a majority of the farm workforce in our nation. And as the Congress debates fundamental immigration reform, I hope that Judge Chertoff will work to help ensure that any reform efforts recognize and embrace the tremendous contributions of immigrants to our economy and our culture.

I would like to note the release last week of a report by the U.S. Commission on International Religious Freedom, a bipartisan commission created by Congress that we asked to study the expedited removal system and its effect on asylum seekers. In his response to me last week, Judge Chertoff showed a commendable concern for the civil rights of those who were detained due to alleged immigration violations during the 9/11 investigation. His concern should be even more pronounced here, where the Commission found that DHS detains people who seek refuge in the United States—and are not even accused of committing any criminal or civil violation—under conditions that

"are entirely inappropriate for asylum seekers fleeing persecution."

If we are to recapture America's rightful place as a haven for the oppressed, the tragic situation of asylum seekers must be rectified. The Commission offered a number of recommendations that can be implemented through administrative action, such as establishing an office within DHS to oversee the treatment of refugees and asylum seekers and issuing formal regulations governing when asylum seekers should be released from detention. I urge Judge Chertoff to begin the process of making these changes immediately.

As secretary, Judge Chertoff will also supervise a number of outstanding Federal employees who are Vermonters and work for various components of the Department, particularly in DHS' immigration agencies. I believe he will be pleased with their efforts and their expertise.

Secretary Ridge and I have disagreed strongly about DHS' efforts to privatize Immigration Information Officer, IIO, and other positions at the agency, and Congress has barred that privatization for the current fiscal year. Among other duties, IIOs perform background checks on applicants for immigration benefits, a function that should be performed by government employees. I urge Secretary Chertoff to consider the repeated votes of both the House and Senate to maintain these positions as government employees and to make no effort to revisit the unwise and unpopular efforts of his predecessor.

I will support this nomination. Secretary Chertoff will face great challenges ahead. I hope that he will work with me and others, on both sides of the aisle, in finding the best solutions in meeting them.

Mr. INOUE. Mr. President, I rise today in support of the nomination of Michael Chertoff to be Secretary of the Department of Homeland Security, DHS. Chairman STEVENS and I had the opportunity to meet with Judge Chertoff, and I was encouraged by his desire to work with Congress to address the nation's homeland security needs. I believe that his stated goal of resolving the internal disputes that have plagued DHS since its founding and his commitment to reduce the vulnerability of all our transportation systems to terrorist attack will serve him well in this new capacity.

Though I support Judge Chertoff's nomination, I want to take this opportunity to express some of my thoughts and concerns about the current state of DHS and the Transportation Security Administration in particular.

In the days following September 11, we all recognized the many serious flaws in our homeland security efforts. We were exposed to new and unexpected threats in ways we had never before thought possible. We committed to do everything in our power to ensure that a tragedy like September 11 would never happen again. We took bold,

speedy, and necessary action. We made transportation security a national security function by enacting the Aviation Transportation Security Act and the Maritime Transportation Security Act, both considered landmark legislation.

Although a number of high profile actions have been taken to strengthen aviation security, I fear that the same zealous effort to adequately strengthen security across all modes of transportation has stalled. In the more than three years since September 11, very little has been done to aggressively promote security of our ports, our passenger and freight rail system, motor carriers, pipelines, and hazardous materials, despite very specific congressional direction.

Meanwhile, the threats to our transportation security are as serious as they have always been. From the train bombing in Madrid to the maritime attack off the coast of Yemen, the threats have not waned in the slightest.

But, based on the President's Budget, there are apparently some in the Administration who seem to believe that our work is done. The President's Budget recommends shifting critical work away from the Transportation Security Administration, TSA, to other organizations within DHS that have neither the expertise nor the necessary authority to be effective. In my view, further decentralizing the responsibilities of TSA will destroy the remaining, limited accountability that TSA provides for transportation security.

I recognize that consolidating 22 Federal agencies into one department presents significant management challenges and that growing pains are to be expected as different agencies come together. However, growing pains are not a license to continue the stovepipe behavior that existed prior to September 11. When Congress created the Department of Homeland Security and, more specifically, the Transportation Security Administration, it made clear that "business as usual" was not acceptable. The Department and TSA need to reread the underlying statutes and start functioning as Congress directed. It is my hope that Judge Chertoff will be a leader who understands that necessity.

Let me speak for a few minutes about the particulars of TSA and the President's budget. In truth, the difficult work of securing all of our major modes of transportation, including ports, shipping, railroads, intercity buses, motor carriers, and pipelines is just beginning, and the nation must have a robust agency within the Department dedicated to that task.

Security funding for all modes of transportation beyond aviation has been desperately lacking. The 9/11 Commission found, "over 90 percent of the nation's \$5.3 billion annual investment in the TSA goes to aviation . . . [and] . . . current efforts do not yet reflect a forward-looking strategic plan."

According to Senate Banking Committee estimates, the Federal Government has spent \$9.16 per airline passenger each year on enhanced security measures, while spending less than a penny annually per person on security measures for other modes of transportation.

Port security and safe maritime transportation is of particular interest to me. They are absolutely essential for my state of Hawaii, its economic health, and the life and livelihood of its citizens. Chairman STEVENS' state of Alaska is similarly situated, and I know port security is of great importance to him as well.

Apparently, though, we need to remind the Administration—and perhaps the nominee—that 95 percent of the Nation's cargo comes through the ports. The security initiatives at most ports have been, to this point, woefully underfunded, and most are ill prepared for an attack. Unfortunately, our maritime system is only as strong as its weakest link. If there is an incident at any one port, the whole system will screech to a halt, as we scramble to ensure security at other ports. If we had to shut down our entire port system, the economic damage would be widespread, catastrophic and possibly irreversible.

Judge Chertoff has many tools at his disposal to protect our maritime and shipping interests, both through the TSA and the U.S. Coast Guard. Our national shore line extends for thousands of miles, with key cities and facilities located all along the coasts. Whether it is monitoring, credentialing, or inspecting cargo, there is no doubt, port security is a daunting and difficult task.

If Judge Chertoff has difficulty understanding the importance of improved port security, there are 14 members of our committee with major ports in their State, and I am sure each would be more than willing to help provide greater clarity.

Even though we all recognize the overwhelming task of port security, the President's Budget does not do enough. It is true that the Coast Guard increases 7.5 percent over the previous fiscal year, which seems laudable. However, when you look at the numbers, it becomes clear that the administration's request—for the third year in a row—does not recognize that in addition to the Coast Guard's ever-increasing port securities duties, it must still continue critical functions like search and rescue efforts and enforcement of coastal and fisheries laws. There is no question that we must provide for increased security, but there is also no question that other critical missions also impact the free flow of maritime commerce.

In addition to not providing enough funding for Coast Guard activities, the President's budget also proposes to develop a Targeted Infrastructure Protection Program, TIPP, within the Office of State and Local Government Coordi-

nation and Preparedness to administer \$600 million in integrated grants for the protection of transit, railroads, ports, highways and energy facilities.

This odd realignment of the grant process adds layers of bureaucracy, further diminishes accountability and distribution of these critical funds, and it is directly contrary to the law Congress enacted just 6 months ago. It also shields the fact that the administration is using the same limited pot of money, extending it to a wider range of grantees, and making them compete against one another when each of their projects merit grant funding.

The administration also proposes establishing a new Office of Screening Coordination and Operations, SCO, within the Border and Transportation Security, BTS, Directorate. This new entity would purportedly coordinate procedures to identify and interdict people, cargo and other entities that pose a threat to homeland security.

This short-sighted proposal calls for cutting over 70 percent of TSA's funding for rail, trucking, pipeline, and hazmat security-related initiatives. The "streamlining of duplicative programs and activities" effectively eliminates TSA's role in allocating transportation security grants, maritime research and development grants, and cedes its regulatory authority to develop the Transportation Worker Identity Credential, TWIC, program. In short, this budget ignores congressional direction, transfers these functions back to agencies that operate in a stovepipe manner and do not have regulatory authority for credentialing, and decimates TSA's Office of Maritime and Land.

Regarding rail security, the administration's budget fails to propose any dedicated funding or specific programs to address rail security, and given their proposal to eliminate support for Amtrak, it is clear that the administration is not interested in rail service let alone rail security. The recent rail accident in South Carolina and the resulting chlorine gas spill remind us that our rail system presents unique vulnerabilities that, if exploited, could cause irreparable economic and physical damage to communities across the country.

TSA has undertaken several small-scale, ad hoc, efforts to strengthen rail security, from rail passenger screening pilot tests to rail corridor threat assessments in specific corridors. But the administration's lack of support for dedicated funding or programs—beyond what the Congress has forced upon the agency through the appropriations process—reflects the low priority that TSA leadership and the administration place on this important work. They behave as if September 11 never happened.

The budget proposal for aviation security appears on paper to increase by \$156 million, but this funding depends on \$1.5 billion in new revenues raised through increased security fees on airline passengers.

We can debate how much we need for security, but it does not make any sense to place the burden for new DHS revenue on an airline industry that is bordering on total bankruptcy, when at the same time the administration is demanding that its unaffordable tax cuts be made permanent.

The airlines have argued convincingly that they cannot pass along increased security fees to the passengers in their highly competitive industry. Few of the carriers have managed even modest periods of profitability since September 11. I must remind people in this town, who often have a short and selective memory, that by a vote of 100 to 0 in the Senate and 410 to 9 in the House, this Congress chose to make transportation security a national security function. Funding homeland security is a Federal responsibility.

Given the many misplaced priorities that I see in the President's Budget proposal, it is clear that the Congress needs to help refocus the Department.

Let me state here before my colleagues and for the record, the Senate Commerce Committee will not stall in its efforts to continue developing comprehensive, bipartisan legislation to strengthen port, rail, and intercity bus security, regardless of the Bush administration's repeated refusal to support or properly address these critical initiatives. Our national transportation system remains an inviting target for terrorists. The system is vulnerable, and an attack could cause widespread, catastrophic economic damage. In fact, in his most recent video tape, Osama bin Laden stated plainly that bankrupting the United States was a primary, al-Qaida goal, and given al-Qaida's previous attacks, it is clear that transportation systems are high on their target list.

So I come to the floor today to inform my colleagues and the administration that, I, along with many of my fellow Commerce Committee members, will be introducing a transportation security reauthorization proposal, which will provide further direction to the Department's cargo security functions, strengthen aviation, maritime, rail, hazardous materials, and pipeline security efforts, and improve interagency cooperation.

The proposal will incorporate several Commerce Committee-reported and Senate-passed bills from the prior Congress and will also put forth new ideas to enhance transportation security across all modes of transportation.

For port security, we will seek to improve interagency cooperation by further developing joint operation command centers. Additionally, our bill will clarify the roles and responsibilities for cargo security programs, while establishing criteria for contingency response plans. Our legislation will further encourage the development of effective technologies that detect terrorist threats by setting a minimum level of R&D funding related to maritime and land security.

To address aviation, we will take several steps to strengthen the existing, professional, screening workforce through improved training of personnel and by directing a more appropriate use of TSA's resources. Additionally, we will seek to streamline and improve collection of airline and passenger security fees to promote a more efficient and healthy aviation industry.

For rail security, we will incorporate an updated version of the Rail Security Act of 2004, which the Senate passed by unanimous consent last year, and we will feature new efforts to ensure the security of hazardous materials that are shipped by rail.

To address the security needs of our other surface transportation modes, the proposal will include funding to improve intercity bus security, strengthened hazardous material transportation security efforts, new security guidelines for truck rental and leasing operations, and the development of pipeline security incident recovery plans.

I look forward to working with Judge Chertoff, the TSA, and the administration on this effort, and I remain hopeful that his new leadership at DHS will inspire the requisite commitment and dedication necessary to meet the security challenges ahead. The work will not be easy. While most of us recognize the improvements that have been made in airline security over the last few years, others are pushing to roll back the progress that we have made.

Despite that progress, there are some that continue to urge TSA to return to the days of private security screening companies, like Argenbright Security and its underpaid, poorly trained workforce. These efforts are not just shortsighted, they disregard a national imperative to treat transportation security as a national security function, and they should be quickly dismissed by the administration. I call on Judge Chertoff to clarify DHS's position on this matter quickly, so the country can continue to have faith in the security efforts we have come to expect when flying.

Similarly, TSA needs more resources and attention paid to port, rail, motor carrier, hazardous materials, and pipeline security matters, not less, and I am hopeful that Judge Chertoff will make strengthening all areas of transportation security one of his top missions.

We must take this opportunity to continue moving in the right direction and avoid taking steps backward. I support the nomination of Michael Chertoff as Secretary of Homeland Security and look forward to working with him to ensure that the American people can depend on a national transportation system that is as safe and secure as possible.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, earlier today, the senior Senator from Massachusetts spoke on this nomination. I

have enormous respect and affection for my colleague from New England, but on this occasion I believe his comments were well off the mark. Here are some of the words my colleague spoke:

Our problems with the administration on this nomination pale in comparison with the failure of the Senate Republican majority to carry out its own constitutional responsibilities on this nomination. Instead of insisting on adequate answers to questions raised by the documents, they have acquiesced in the Government's coverup and abdicated their own independent constitutional responsibility to provide advice and consent.

I sincerely believe that were I fortunate enough to have the senior Senator from Massachusetts serve on the committee the Presiding Officer and I serve on, he would never have said those words or reached such a harsh judgment.

He went on in his statement to call these proceedings "a blatantly defective consent." Again, I so wish that the senior Senator from Massachusetts had had the opportunity to participate in our committee's process. He would have found that our committee has the most thorough process for considering nominations of any committee in the entire Senate. I believe our committee is the only one, for example, that has the staff on both sides of the aisle interview the nominee. We posed to Judge Chertoff 250 written questions, both before the hearing and after the hearing. We had a lengthy hearing in which members on both sides of the aisle were free to ask the toughest questions possible to the nominee.

There was no limit on the questions that could be submitted for the record, and the nominee sat for hours patiently, fully, and candidly answering the questions posed to him by the members of the committee. So I believe that the judgment of the Senator from Massachusetts does not reflect the process we undertook for this nominee. I truly wish he could have seen the process because I think he would have reached a different conclusion. And I say that with a great deal of personal affection for my friend from Massachusetts.

The fact is, first, that Judge Chertoff has undergone intense scrutiny by the Homeland Security and Governmental Affairs Committee. I cannot imagine how anyone could conclude, given the number and the scope of questions posed to the judge, that this was somehow "defective consent."

Second, on the issue of the e-mails and the nominee's knowledge of questionable interrogation techniques used by certain DOD personnel at Guantanamo, Judge Chertoff's testimony could not have been clearer. He told the committee under oath that he was "not aware" of any practices at Guantanamo that "even approach[ed] torture." He said he had "no knowledge" of any interrogation techniques other than those that he described as "plain vanilla." These are straightforward, plain words—"I was not aware"; "I had no knowledge." They are not suscep-

tible to multiple interpretations. They are not ambiguous. They do not suggest the need to refresh the nominee's recollection. They do not invite speculation as to what the nominee meant. And there is only one reason why some of our colleagues would feel the need to ask other people about what they said to Judge Chertoff, and that is, if we did not believe him.

This is a distinguished public servant, a sitting Federal judge who is testifying before our committee under oath. There is no reason to doubt his testimony. His testimony was clear, it was forthright, it was candid. It is demeaning to suggest that somehow we need to probe this further because we do not believe this distinguished public official.

I asked this question yesterday, but I am going to repeat it again: Since when have we become so cynical about good people who are willing to step forward, sacrifice, and serve our country? How could our colleagues from Michigan and Massachusetts come to this floor, praise Judge Chertoff, pledge to vote to confirm him, and then condemn the nomination process when we have concluded that the judge gave us truthful, straightforward answers, and we have no reason to doubt the answers he gave us? He was not evasive. He was straightforward. It does not make sense to criticize the process because the committee refuses to engage in an exercise that, at its core, is built upon the premise that Judge Chertoff is somehow being less than truthful with the committee. I reject that premise. There is no basis for it.

Let me close these remarks by saying a word about the Senate's constitutional role of advise and consent because I think a lot that has been said about this role misses an essential point.

We, the Senate, advise and consent. It is the President who appoints. We do not appoint. Sometimes I think some of my colleagues believe the Senate should do all of the appointing for the President, but that is not how the system works. That is not how our Constitution works. Indeed, as Professor Laurence Tribe has noted—and he is a liberal law scholar, not a conservative one—the appointments clause "seeks to preserve an executive check upon legislative authority in the interest of avoiding an undue concentration of power in Congress"—in Congress—"in executing our responsibilities."

We should do well to remember that it is the President who is appointing these positions. It is our job to advise and consent. We have performed that job well in this case. We subjected this nominee to extraordinary scrutiny, despite the fact that he has already been confirmed by this body three previous times. Nevertheless, as is appropriate, we went through a full confirmation process with a review of his biographical questionnaire, his finances, with a full FBI check, with an extensive public hearing that stretched several

hours, and with 250 written questions, primarily from Democratic members, submitted to him for response. What more can we ask? What more can we ask of a nominee who is simply stepping forward to answer the call to serve his country? And what more can we ask of a Senate committee in carrying out this solemn duty with which we are vested?

As much as I have respect and affection for my colleague, the senior Senator from Massachusetts, I cannot let his comments pass. That is why I felt compelled to explain to all of my colleagues what the process was and that the Senator's description simply does not reflect what was done. I am certain—absolutely certain—that had he been a member of the committee, had he joined with us in the nomination hearing, he would have reached an entirely different conclusion about the integrity and thoroughness of the process.

I thank the Chair.

Mr. President, I do anticipate that further of my colleagues will be coming to the floor. I will yield to them when that happens.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 380 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Ms. COLLINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, how much time is left on this side?

The PRESIDING OFFICER. The Senator has 22 minutes 30 seconds.

Mr. REID. Mr. President, I, first, want to express my appreciation to someone I believe a star of the Senate and that is CARL LEVIN. CARL LEVIN is such a good example to every Senator. When you work on something with CARL LEVIN, you can rest assured that he has read every word of it. He is someone who I am sure, before he came to the Senate, was an outstanding lawyer. I am so impressed with his ability to do legal analysis, and I am so impressed with his understanding of government generally.

What we have here is something that is very typical for Senator LEVIN. The nomination of Michael Chertoff to be Secretary of Homeland Security is very important. This new Cabinet level office that has been created is so important. I think it has become one of the most important posts that the President has. We know how important the Secretary of Defense is, we know how important the Secretary of State is, but this is so important.

Judge Chertoff will be called upon to manage some 180,000 employees, 22 dif-

ferent agencies, all important to protect this Nation in one way or the other. He will be called upon to bolster the efforts of our State and local law enforcement officers, firefighters, emergency response personnel, and in the process of managing these 180,000 employees, he doesn't have enough people. Many of these 22 different agencies he is responsible to manage are understaffed. So he will have a tremendous burden.

The people who work in these agencies are public servants first in any designation you want to make. They are the frontline protection for communities across the Nation.

Over the course of the last year, I have held in Nevada what I call Frontline Focus roundtables. I am meeting with firefighters, sheriffs, and emergency response personnel. It has been tremendously enlightening to me to talk to them about the problems that we have, from the communication and resource challenges facing urban centers such as Las Vegas and Reno, but also rural communities all over the State of Nevada. They have special needs, special demands.

Of course, I mentioned already Las Vegas with its booming tourist industry. About 20 people an hour are moving into Las Vegas. It is growing and the growth has not stopped. So Nevada's homeland security needs run the gamut. Our State and local officials will need the support and help of Judge Chertoff and the Department of Homeland Security in the work they do. His job is a tough and challenging job, and that is an understatement.

I have confidence in Judge Chertoff. I am confident he will meet these challenges. It was less than 2 years ago that we approved him by an overwhelming vote of 88 to 1 to a lifetime appointment on the Court of Appeals of the Third Circuit. But he was willing to give up this lifetime appointment for a job that will last probably 4 years.

Since his confirmation, the administration has been mired in controversy over its handling of prisoners and detainees. The administration policies have come under great scrutiny and we need to learn, during the course of this confirmation hearing, and we tried to do that, what role he may have played in crafting these policies.

Judge Chertoff has testified before the Homeland Security and Governmental Affairs Committee that he was not directly involved in the administration's decision to gut the Geneva Conventions and set out on a new and dangerous path with regard to interrogations. We have to take Judge Chertoff at his word, because the document proof has either been denied to Senators or otherwise has been so heavily redacted that it raises questions about the role of the Criminal Division overseen by Judge Chertoff.

The debate over his nomination, as my colleague, Senator LEVIN, has brought to the attention of the Amer-

ican people, as he discussed this yesterday on the floor, is a debate over the right of the Senate and the American people to have information about the way our Government does business.

The information sought in the context of his nomination by Senator LEVIN would help us understand how the administration arrived at those policy decisions and would help prevent similar mistakes in the future.

No one would disagree—I shouldn't say that. Very few people would disagree that the policies undertaken in Guantanamo Bay, Afghanistan, and Iraq dealing with interrogation which led to these brutal acts, the acts of torture, were wrong. These policies were used to justify forced nakedness. Keep in mind we live in a different environment than the people of Iraq. The shaving of the beards was demeaning to these men, but it was done many times. They were placed in stressed positions. They were intimidated with dogs, and on and on. We learned of these torture policies and their impact not from this administration, as is our right, but through leaks and lawsuits. Leaks and lawsuits, unfortunately, is the way we have to learn much of what is going on today.

The shocking abuses—and there is no other way you can describe it—at Abu Ghraib were revealed when the photographs were released to the news media. I can remember going upstairs to S. 407 with other Senators and looking at the brutality and the pornographic nature of those pictures. Even for someone who has seen other acts of torture and terror in the work that we do, it was overwhelming. I had no idea that is what I would see that day. I waited not too long before I left. I saw enough in about 15 minutes, but I saw a lot.

Major General Taguba's report investigating the abuse at Abu Ghraib was discovered after it, too, was leaked to the press. Judge Gonzales's January 25th, 2002, memo advising the President that the Geneva Conventions were "quaint and obsolete" was not known until it was leaked to the press 2 years later. The Senate only learned of the August 1, 2002, Bybee torture memo when it was leaked to the press in June of that year.

I ask my colleagues, if this information had not come to light, would the administration disavow these practices? I regret that in the context of this nomination the administration will again deny the Senate and the American people a full understanding of how we embarked on a policy which has imperiled our soldiers and our Nation.

In Judge Chertoff's case, we know during his tenure that torture policies authorized by Justice and given effect by the Department of Defense were hotly debated by DOD, Justice Department, and FBI officials. We know this only because a private group filed a freedom of information request for such information. The request produced a series of redacted FBI emails

that gave voice to the dissenters this administration has tried to muzzle. The redactions prevent us from fully understanding that debate and how Criminal Division lawyers under Judge Chertoff's supervision dealt with the FBI concerns that the torture policies were not only immoral but ineffectual. It prevents us from truly understanding Judge Chertoff's role and whether attorneys under his supervision raised the issue with him directly. He said he does not remember. I accept the judge's statement in that regard. But that does not take away from the necessity of being able to have this information.

In response to Senator LEVIN's request for an unredacted version of the FBI emails, the administration issued its broadest assault against the Senate's duty to evaluate a nominee to get oversight of this administration. The administration claimed it would not turn over the unredacted emails because to do so would violate the Privacy Act, even though, through Senate security, any classified information would be protected. The Privacy Act is designed to prevent the Government from disclosing personal information about private individuals who have not consented to disclosure. It is not a tool to conceal identities of public officials engaged in this Nation's business.

As my colleague from Michigan, Senator LEVIN, has so forcefully stated, the administration's penchant for secrecy threatens each and every Senator's ability to do the people's business and undermines our role in providing advice and consent to the President's nominees and undermines our role in conducting oversight into this administration. In the end, what is most troubling is that the administration's culture of secrecy may breed further abuses, abuses we know of today, not because of but in spite of the administration's effort.

We must overcome these roadblocks put up by the administration because the job of protecting the homeland is too important. Judge Chertoff will have enormous challenges if he assumes his new position, which I am confident he will. Border security, immigration, port security, airport screening, protecting America's critical infrastructure, and so much more will now fall under his purview. He has pledged to work with the Congress in crafting the Department's policies. As much as possible, this must be a non-partisan exercise. Working together, we can and we must put our country in the strongest possible position to defend itself for the many threats we face.

In short, what I am criticizing and complaining about, we have some emails from the FBI to the Justice Department, saying, in effect, how we conduct our interrogations is appropriate. What the Department of Defense is doing with their brutality and their torture is wrong. I am convinced that is true; the FBI was right. I hope

somehow we will be able to get the names of these individuals and pursue it more carefully and also find out what the real words were; I am confident it was torture. One thing we know clearly from these memos is that the FBI says using our methods, the normal methods of interrogation, we are getting more information from the enemy than you are while using your acts of violence.

I close by saying, again, I want this record spread with the fact that Senator LEVIN has done a good thing for this country. He has done good work again in allowing us to look at an issue that should be a simple issue that has been made complicated by this administration by virtue of their hiding what it should not.

Ms. COLLINS. Mr. President, I ask unanimous consent the quorum call I am about to invoke be charged equally to both sides.

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

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. FRIST. Mr. President, in a few moments we will be voting on the nomination of Judge Michael Chertoff to lead the Department of Homeland Security. I applaud President Bush for his outstanding choice, and I am confident that Judge Chertoff will receive overwhelming support from both sides of the aisle, making this his fourth confirmation by this body, the Senate.

Judge Chertoff has a long and distinguished career in public service and law enforcement.

The Harvard Law magna cum laude first made his name in the mid-1980s putting away five of the biggest Mafia bosses in New York.

His success brought him the job of U.S. attorney in New Jersey where he oversaw high-profile and politically sensitive prosecutions.

In 2001, Judge Chertoff was chosen by President Bush to lead the Justice Department's Criminal Division. It was there that Judge Chertoff would show his full mettle. For the 20 hours following the attacks on 9/11, Judge Chertoff was central in directing our response.

His team in the Criminal Division traced the 9/11 killers back to al-Qaida. And for the next 2 years, Judge Chertoff helped craft our antiterrorism policy.

His experience working directly with law enforcement, his expertise in homeland and national security, and his proven ability to lead in times of national crisis make him overwhelmingly qualified to direct our homeland security.

Judge Chertoff has said he will be proud to stand again with the men and women who form our front line against terror. I know I speak for many when I say we are proud to have a man of his caliber and talent serving and protecting the American people.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Michael Chertoff, of New Jersey, to be Secretary of Homeland Security? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Pennsylvania (Mr. SPECTER).

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), is necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 10 Ex.]

YEAS—98

Akaka	Dole	Martinez
Alexander	Domenici	McCain
Allard	Dorgan	McConnell
Allen	Durbin	Mikulski
Bayh	Ensign	Murkowski
Bennett	Enzi	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Bond	Frist	Obama
Boxer	Graham	Pryor
Brownback	Grassley	Reed
Bunning	Gregg	Reid
Burns	Hagel	Roberts
Burr	Harkin	Rockefeller
Byrd	Hatch	Salazar
Cantwell	Hutchison	Santorum
Carper	Inhofe	Sarbanes
Chafee	Inouye	Schumer
Chambliss	Isakson	Sessions
Clinton	Jeffords	Shelby
Coburn	Johnson	Smith
Cochran	Kennedy	Snowe
Coleman	Kerry	Stabenow
Collins	Kohl	Stevens
Conrad	Kyl	Sununu
Cornyn	Landrieu	Talent
Corzine	Lautenberg	Thomas
Craig	Leahy	Thune
Crapo	Levin	Vitter
Dayton	Lieberman	Voinovich
DeMint	Lincoln	Warner
DeWine	Lott	Wyden
Dodd	Lugar	

NOT VOTING—2

Baucus Specter

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The majority leader.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a