Because it is far ahead of the curve when it comes to chemical security, the notion that the Department of Homeland Security can issue regulations that could preempt New Jersey's, and possibly be weaker than our standards, turns logic on its head. The bottom line is, when it comes to the security of things uniquely New Jersey, like the location of this chemical plant, no one knows what we need better than our State. And that is the position that this bill takes. I applaud my fellow Senator from New Jersey, Mr. LAUTENBERG, for ensuring this language is part of this bill, and I thank Senator BYRD for realizing how essential preserving New Jersey's standards are for the future of chemical security.

When this Homeland Security appropriations bill is passed and signed into law, we will be able to definitively say we have passed legislation that makes us smarter and stronger when it comes to our Nation's security.

The bill ensures we are protecting, not neglecting, our critical infrastructure; our first responders have more, not less, to do their jobs; and our States will have the critical resources they deserve.

I urge all my colleagues to support this incredibly sound bill and take this important step to getting our homeland security funding where it should be in finally meeting the challenge of securing our Nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that I be permitted to speak for up to 10 minutes as in morning business.

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

## ATTORNEY GENERAL GONZALES

Mr. WHITEHOUSE. Mr. President, yesterday, as you will recall, in the Senate Judiciary Committee, Attorney General Gonzales appeared. I spoke with him about a seemingly simple concept, the impartial administration of justice.

But, as is so often the case with this administration and with this Attorney General, the simple is often confused, and what should be impartial is often tainted with politics.

I asked the Attorney General about the administration's policy regarding communications between staff at the Department of Justice and at the White House, about ongoing investigations and cases. This kind of conversation, of course, should be very limited in scope. Until recently, it was.

Attorney General Janet Reno wrote, in a 1994 letter to White House Counsel Lloyd Cutler:

> Initial communications between the White House and the Justice Department regarding any pending Department investigation or criminal or civil case should involve only the White House Counsel or Deputy Counsel (or President or Vice President), and the Attorney General or Deputy or Associate Attorney General.

That is seven people, total. Four in the White House, three in the Department of Justice.

As I pointed out to the Attorney General, this administration has dramatically expanded this policy to allow literally hundreds of people at the White House to discuss sensitive case-specific information with dozens of people at the Department of Justice. Even worse, a further revision to this policy signed by Attorney General Gonzales specifically added the Vice Presidents's Chief of Staff and the Vice President's Counsel, David Addington, to the list of those empowered to have these conversations. Karl Rove, by the way, is also on the list.

Why in the world would it be appropriate to give the Vice President's staff a green light to muck around in sensitive Department of Justice affairs? Based on my experience as a U.S. attorney, I can think of no reason.

So why did the Attorney General himself issue a memo specifically authorizing that? Well, the Attorney General himself seemed to have no idea. When I asked him about it yesterday, he said:

> As a general matter, I would say that that's a good question. I'd have to go back and look at this. On it's face, I must say, sitting here, I am troubled by this.

Well, Mr. Gonzales, I am troubled by this too. Troubled but, unfortunately, not surprised.

Not surprised because this administration has, at almost every turn, done everything possible to enhance the power of the President and the Vice President to dismiss Congress's essential constitutional oversight responsibilities, to disrupt the balance of power crafted by our forefathers and to thwart those who would stand up and say: Enough is enough.

But now a chorus of Senators is finally saying: Enough is enough.

When I ran for the Senate, I spoke often about the need for a check on the Bush administration's relentless abuse of power. Now, after having served in this great institution for only 6½ months, I feel more strongly than ever that it is vital for our Democratic majority to serve as an essential bulwark against an imperial executive branch.

Without 60 votes, we cannot get things done over objection from the other side as often as we would like. But with a majority, we can at least stop some of the mischief. We can stop them from politicizing everything from Government-funded scientific research to U.S. attorney's offices, Government functions that have historically operated entirely free of partisan influence.

We can spotlight their efforts to undo our system of checks and balances, their penchant for unneeded secrecy, and often, disregard for the law and our American principles.

We can call them out when they use national security as a shield against legitimate oversight and as a weapon against political adversaries, against attempts to conduct Government in secret and in darkness and sometimes in defiance of the law.

In the process, the administration has done grave damage to the principles and values that have made this country an example for the world. The writ of habeas corpus? Adherence to the Geneva Conventions? The independence of Federal prosecutors? The principle of judicial review? The notion that a citizen in a democracy has a right to know what their Government is doing in his name?

Each of these, in ways great and small, has been eroded by this administration. Then, when you think they cannot possibly push the envelope any further, they do. I am referring to two recent episodes: First, the Vice President's now infamous and incredible assertion that his office is exempt from an Executive order designed to protect classified information because it is not, get this, it is not an entity within the executive branch, and the Attorney General's apparent complicity with this theory.

Executive Order No. 12958, as amended by President Bush, regulates the classification, safeguarding, and declassification of national security information. It also requires the National Archives' Information Security Oversight Office to, among other things, conduct onsite inspection of Federal agencies and White House offices to ensure compliance with these important regulations.

Despite cooperating with the National Archives in 2001 and 2002, in 2003, the Vice President abruptly decided he was above complying with an Executive order, even one signed by President Bush.

Repeated attempts by the National Archives to secure the Vice President's cooperation or at least an explanation for noncompliance were met with silence and then, apparently, an effort to abolish the office that had dared try to enforce the law.

In the meantime, in January 2007, the National Archives referred the question to the Department of Justice for clarification, as to whether the Vice President is an executive branch entity required to comply with an Executive order. You might think that in 6 months the Department of Justice would produce a memo stating the Vice President must comply with Executive orders and that he is, in fact, as we all know, in the executive branch.

Well, you would be wrong. The Vice President makes an argument that would flunk an elementary school civics test so he may circumvent safeguards on national security information. The Attorney General goes along with this by refusing even to respond to a letter seeking clarification of the law, which is a core function of the Department of Justice Office of Legal Counsel.

What is going on here? Second, in this ignominious list is the President's

personal intervention to deny security clearances to investigators from the Justice Department's Office of Professional Responsibility, or as we call it, OPR, who were looking into the administration's warrantless domestic surveillance program.

This is the first time ever an OPR investigator was denied necessary clearances to conduct their investigation. Of course, the denial of security clearances had the intended effect: The investigation by OPR was shut down.

Now, as we all know, the distinguished chairman of the Senate Judiciary Committee, Senator LEAHY, has been forced to issue subpoenas to the White House, the Office of the Vice President, the Department of Justice, and the National Security Council, in order to obtain information Congress has sought for months related to the administration's legal justification for the warrantless wiretapping program.

If the White House's refusal to honor earlier congressional subpoenas and turn over information on the U.S. attorney firings is any indication of things to come, we can expect more stalling and more stonewalling by this administration as Congress seeks to learn the truth.

Again, what is going on here? What is going on, I believe, is a systematic effort on the part of the Bush administration, to twist, to partisan and political advantage, threats to our national security as justification for conducting Government in secret and in darkness, shadowed from congressional oversight and far from the light of public scrutiny.

If this requires making preposterous arguments, such as the Vice President's, in their view, that is fine. If this requires taking unprecedented action to deny clearance to Government investigators, fine by them. If this requires dispensing with many years of tradition and practice, distorting the plain language of Executive orders and abdicating the Department of Justice's watchdog role, again, fine with them. If this requires attempts to a evade even a congressional subpoena, well, that is apparently fine too.

I will end where I began, with the issue of communications regarding ongoing cases and investigations between the White House and the Department of Justice. As Mr. Gonzales acknowledged yesterday, the greatest danger of infection of the Department of Justice with improper political influence comes from the White House.

Along with Chairman LEAHY, I have introduced a bill to set the Reno-Cutler policy for White House contacts as a baseline and to require the Department of Justice and the White House to report to Congress any time they authorize someone else to have these sensitive discussions.

It is my sincere hope this bill will have bipartisan support. But this bill is only one small part of a larger effort to restore checks and balances to our Government. We must and we will continue this effort, challenging the administration to work for the Democratic Congress, to stop playing politics with national security, and to end the secrecy and abuse of power that have become the hallmark of the Bush era.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DURBIN. I ask unanimous consent to speak as in morning business.

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

## NOMINATION OF JUDGE LESLIE SOUTHWICK

Mr. DURBIN. Mr. President, one of the more challenging tasks for a Senator is not to stand in judgment of a bill or even a law or a policy but to stand in judgment of a person. I served in the House of Representatives for 14 years before coming to the Senate. It is the one dramatic difference between the two bodies. Time and again we are called on in the Senate, in our capacity to advise and consent to Presidential nominations, to stand in judgment of people. It is not an easy assignment. You have to, in a matter of a short period, maybe meet a person, read about their background, and try to think ahead whether they are ready for the job they are being sent to do. For some it is only a temporary assignment. It might be for a year or two or more in a Federal agency with an important responsibility. I look at those judgments and assignments seriously, but not nearly as seriously as the task of picking Federal judges. A Federal judge, that man or woman, is appointed for a lifetime. The decision you make about a person has to be done more carefully. There has to be more reflection. If questions are raised about a person, their judgment, their values, their background, their veracity, their integrity, those questions are taken more seriously because that judge on that bench will be the face of America's law for the rest of his or her natural life.

As a member of the Judiciary Committee, I come face to face with these decisions on a regular basis and try to do my best to not only help pick good judges for my own State of Illinois but to be fair in judging those the President, whether a Democrat or Republican, sends to us for approval.

There is a controversial nomination now pending for the U.S. Court of Appeals for the Fifth Circuit, the nomination of a local State judge in Mississippi named Leslie Southwick. I came to the Southwick nomination with no advance knowledge of the man or anything he had done. I truly had an open mind. I attended his nomination hearing and tried to give him the benefit of the doubt. Today I am sorry to report I have only doubt about his appointment to this lifetime position. There are too many questions about whether Judge Southwick would bring a measure of fairness in cases involving civil rights and the rights of ordinary people in his court. This perception as to whether he will be fair or even-handed is determinative in my mind. Whether you agree with that perception, it is there.

It is sad but accurate to report that Judge Southwick has lost the confidence of the civil rights community in the State of Mississippi and across the Nation. There is one case I wish to mention which may help explain why this has occurred. The case is called Richmond v. Mississippi Department of Human Services. Because of the wording in the case, it is unfortunate, I will be unable to read it into the RECORD; it would be inappropriate. But suffice it to say, in this 1998 case, the Mississippi State Court of Appeals ruled 5 to 4 to reinstate and give back pay to a White employee who had been fired for calling a Black employee the ''N'' word. Judge Southwick was in the five-person majority and thus was the deciding vote in that case.

Here is the background. The plaintiff, Bonnie Richmond, was a White employee who worked at the Mississippi Department of Human Services, a State agency with a 50-percent African-American workforce. After referring to an African-American colleague as a ''good ole'' ''N'' word, Bonnie Richmond, the white employee, was fired. She appealed her termination and was successful. A State hearing officer reinstated her. That decision was affirmed by the full Mississippi Employee Appeals Board, then reversed by the State court trial judge. Judge Southwick's court reversed it again, ruling for the White employee who had used the offensive racial epithet. Finally, the Mississippi Supreme Court weighed in. The Mississippi Supreme Court unanimously reversed the majority opinion which Judge Southwick had signed his name to, ordering the case to be remanded to determine an appropriate punishment short of termination for the White employee, Bonnie Richmond.

Mr. Southwick's defenders point out that he didn't write the opinion he signed on to. That is certainly true. But he didn't have to sign on to it, if he didn't agree with it. He could have filed a concurrence agreeing in the judgment but not the reasoning. He chose not to do so. The opinion Judge Southwick signed stated that the White employee who used the ''N'' word in this case ''was not motivated out of racial hatred or animosity directed toward her co-worker or toward blacks in general.''

I don't believe that is a mainstream view in America. I don't believe it is a mainstream view to say that the ''N'' word is ''not motivated out of racial