

He was asked about the positions he had advocated on behalf of his clients as an attorney. Here is what the Chief Justice told us:

It's a tradition of the American Bar Association that goes back before the founding of the country that lawyers are not identified with the positions of their clients. The most famous example probably was John Adams, who represented the British soldiers charged in the Boston Massacre. He did that for a reason, because he wanted to show that the Revolution in which he was involved was not about overturning the rule of law, it was about vindicating the rule of law.

And he went on to say:

That principle, that you don't identify the lawyer with the particular views of the client, or the views that the lawyer advances on behalf of a client, is critical to the fair administration of justice.

You practiced law, Madam President. I have too. Many times you find yourself in a position representing a client where you do not necessarily agree with their position before the court of law. But you are dutybound to bring that position before the court so the rule of law can be applied and a fair outcome would result. If we only allowed popular causes and popular people representation in this country, I am afraid justice would not be served.

Chief Justice Roberts made that point when he was being asked about his representation of legal clients. I would say to many on the other side of the aisle who are questioning David Ogden's reputation, they owe the same fairness to him that was given to Chief Justice Roberts in that hearing.

I would remind the conservative critics of Mr. Ogden, look carefully at that testimony. What is good for the goose is good for the gander.

After 8 years of a Justice Department that often put politics over principle, we now have a chance to confirm a nominee with strong bipartisan support who can help restore the Justice Department to its rightful role as guardian of our laws and the protector of our liberties.

David Ogden has the independence, integrity, and experience for the job. I urge my colleagues to join me in voting for his nomination to be Deputy Attorney General.

#### CLEAN COAL RESEARCH PROJECT

Mr. DURBIN. Madam President, it was about 7 years ago when the Bush administration announced what they said was the most significant coal research project in the history of the United States. The name of the project was FutureGen. The object was to do research at a facility to determine whether you could burn coal, generate electricity, and not pollute the environment. It is an ambitious undertaking.

The way they wanted to achieve it was to be able to capture the CO<sub>2</sub> and other emissions, virtually all of them coming out of a powerplant burning coal, and to sequester them; that is, to stick them underground, find places underground where they can be absorbed by certain geological founda-

tions, safely held there. Of course, it was an ambitious undertaking. It had never been done on a grand scale anywhere in the country.

Well, the competition got underway and many States stepped forward to compete for this key research project on the future of coal. There were some five to seven different States involved in the competition. My State of Illinois was one of them. The competition went on for 5 years.

Each step of the way, the panel of judges, the scientists and engineers would judge the site. Is this the right place to build it? Is it going to use the right coal? Can they actually pump it underground and trap it so that it will not ever be a hazard or danger at any time in the future? Important and serious questions.

My State of Illinois spent millions of dollars to prove we had a good site. When it finally came down to a decision, there were two States left: Texas and Illinois. Well, I took a look around at our President and where he was from, and I thought, we do not have a chance. Yet the experts made the decision and came down in favor of Illinois. They picked the town of Mattoon, IL, which is in the central eastern part of our State, in Coles County, and said that is the best place to put this new coal research facility.

We were elated. After 5 years of work, we won. After all of the competition, all of the different States, all of the experts, all the visits, everything that we put into it, we won the competition.

Within 2 weeks, the Secretary of the U.S. Department of Energy, Mr. Bodman, came to my office on the third floor of the Capitol and said: I have news for you.

I said: What is that?

He said: We are canceling the project.

I said: You are cancelling it? We have been working on this for 5 years.

He said: Sorry, it cost too much money. The original estimate was that this was going to cost \$1 billion. When the President first announced it, we knew inflation would add to the construction costs over some period of time. But here was Mr. Bodman saying it cost almost twice as much as we thought it would cost; therefore, we are killing the project.

Well, I was not happy about it. In fact, I thought it was totally unfair, having strung us along for 5 years, made my State and many others spend millions of dollars in this competition, go through the final competition and win, and then be told, within 2 weeks: It is over; we are not going to go forward with it.

So I said to Mr. Bodman: Well, you are going to be here about a year more, and I am going to try to be here longer. At the end of that year, when you are gone, I am going to the next President, whoever that may be, and ask them to make this FutureGen research facility a reality.

I told the people back home: Do not give up. Hold on to the land we have

set aside. Continue to do the research work you can do. Bring together the members of the alliance—which are private businesses, utility companies, coal companies—not only from around the United States but around the world interested in this research and tell them: Don't give up.

So we hung on for a year, literally for a year, and a new President was elected. It happened to be a President I know a little bit about, who was my colleague in the Senate, Senator Obama. When we served together, he knew all about this project and had supported it.

So now comes the new administration and a new chance. The Obama administration has said to me and all of us interested in this project: There is one man who will make the decision: it is the Secretary of Energy, Dr. Chu. He is a noted scientist who will decide this on the merits. He is going to decide whether this is worth the money to be spent. So we made our appeal to him, we presented our case to him, and left it in his hands. We are still worried about this whole issue of cost.

BART GORDON, a Congressman from the State of Tennessee and serves on the House Science Committee, he sent the Government Accountability Office to take a look at FutureGen to find out what happened to the cost, why did it go up so dramatically.

Well, the report came out last night. Here is what the report found. The report found the Department of Energy had miscalculated the cost of the plant, overstating its cost by \$500 million because they made a mathematical error—\$500 million.

Taking that off the ultimate cost brings it down into the ordinary construction inflation cost. And so many of us who argued their estimate of cost was exaggerated now understand why. They made a basic and fundamental error calculating the cost of this project.

Here is what we face. Now, 53 percent of all the electricity in America is generated by coal. Burning coal can create pollution. Pollution can add to global warming and climate change, and we have to be serious about dealing with it.

This plant is going to give us a chance to do that. When the GAO took a look at the Department of Energy documentation, they also discovered a memo which said: If we kill the FutureGen coal research plant, we will set coal research back 10 years with all of the time they put into it. All of the effort they put into it would have been wasted and could not be replicated.

So that is what is at stake. The ultimate decision will be made by Dr. Chu at the Department of Energy. I trust that he will find a way to help us move forward, but I want him to do it for the right scientific reasons.

If we are successful, we will not only be able to demonstrate this technology for America but for the world. The reason why foreign countries are joining

us in this research effort is what we discover will help them. China is building a new coal-fired plant almost every week and is going to be adding more pollution to the environment than we can ever hope to take care of in the United States alone.

But if we can find a way, a technology, a scientific way, using the best engineering and capture that pollution before it goes into the air, it is a positive result not just for the United States but for the world.

From a parochial point of view, we happen to be sitting on a fantastic energy reserve right here in America. There are coal reserves all across the Midwestern United States, and almost 75 percent of my State of Illinois has coal underneath the soil. It is there to be had and used. But we want to use it responsibly.

We want to make sure at the end of the day that we can use coal and say to our kids and grandkids: We provided the electricity you needed but not at the expense of the environment you need to survive.

So this finding by the GAO has given us a new chance. We are looking forward to working with the Department of Energy. For those back in Illinois who did not give up hope, we are still very much alive, and this latest disclosure gives us a chance to bring the cost within affordable ranges. I hope the Department of Energy will decide to move forward on this critical research project.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called proceeded to call the roll.

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

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

(The remarks of Mr. WEBB pertaining to the introduction of S. 572 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### EARMARKS

Mr. WEBB. Madam President, I rise to address the recent debate we have had on the Omnibus appropriations bill with respect to earmarks. The premise seems to be, for those who have criticized the earmarks process, that this is pork. Sometimes it is; sometimes it is not. But I would start first with the Constitution.

There is nothing in the Constitution that says the executive branch of Government should appropriate funds or decide which funds should be spent. That is a procedure that has evolved over the centuries because of the complexities of Government, where the executive branch looks at its needs and comes to the Congress and asks for appropriations. Earmarks take place when individual Members of Congress, exercising their authority to appropriate under the Constitution, decide

and recommend that worthwhile programs in an ideal case should be included in a budget process, programs that have not been considered or included by the executive branch or through other processes.

For instance, I was able, last year, along with Senator John Warner, now retired, to bring \$5 million into a rural area of Tidewater, VA, so they could put broadband in. Broadband is something we know all Americans who want to compete for their future and contribute equally need to have. It didn't make it into anybody's bill. Who is thinking about sparsely populated areas such as rural Virginia? Yet we were able to bring a lot of benefit to those who otherwise would not have received it.

What I would ask my colleagues, particularly those who have become so adamant in their concern over the earmarks process, to consider is, let's take a look at the budget that comes to the Congress. Is there pork in the budgets that come over, pork that comes through, in some cases, unnecessary influence or individual discretion? You bet there is.

I say that as someone who spent 5 years in the Pentagon, 4 years of which I was on the Defense Resources Board where on any given day we were implementing a budget, arguing a budget in the Congress, and developing the next year's budget. I offer an example of a situation that my staff has been following for the last 10 months and use it as an invitation to colleagues to join me in looking at where there can be abuses of discretion and where there can be a lot of money that can be saved.

Ten months ago, on May 21, there was an article in the Wall Street Journal that talked about Blackwater Worldwide attempting to obtain local approval for a new training center in San Diego, CA. We all remember Blackwater. They are an independent contractor that has done more than a billion dollars of business since the Bush administration, the most recent Bush administration took office. I became curious about this project, first, because I had seen reports of what a very high percentage of the Blackwater contracts had been awarded were either noncompete or minimal compete and the high volume number, more than a billion of them. And also the fact that having at one time been Secretary of the Navy, they were apparently wanting to build a training center so they could train Active-Duty sailors how to defend themselves onboard a ship.

Having spent time in the Marine Corps, I immediately started thinking about what it would have been like to have a nonmilitary contractor teaching me how to do patrolling when I was going through basic school in Quantico all those years ago. It didn't fit.

I started asking around. The first thing I found out was, this was a contract from the Navy that was worth about \$64 million. I wrote a letter to

Secretary Gates. I said: Is this Blackwater program in any way authorized or funded by U.S. tax dollars? The answer came back, yes, obviously. I asked: Is there specific legislative authorization for it? Because I couldn't find any, as a member of the Armed Services Committee. The answer was no. According to Secretary Gates, this activity falls under the broad authorization provided to the Secretary of Defense and the Secretaries of the military departments to procure goods and services using appropriated funds and prescribed procedures for those procurements.

Then I asked him in this letter: Is there a specific appropriation, either in an appropriations bill or through an earmark? The answer is: No, there was no specific appropriation or earmark directing this effort.

As we started to peel this back, here is what we found. An individual, an SCS, midlevel individual in the Department of the Navy had the authority to approve this type of a program up to the value of \$78 million, without even having a review by the Secretary of the Navy. This was not an authorized program. It was not an appropriated program. It was money that came out of a block of appropriated funds for operation and maintenance that then somebody in the Navy said was essential to the needs of the service, the needs of the fleet, which is a generic term.

I ask my colleagues who are so concerned about some of the pork projects or earmarks process here, which has gained a great deal of visibility since I have been here over the past 2 years and transparency, to join me in taking a look at these sorts of contracts. When a midlevel person in the Pentagon has the authority to approve a program that hasn't been authorized and hasn't been appropriated up to the value of \$78 million and not even have the oversight of the Secretary of that service, that is where you see the potential for true abuse of the process. That is where we need to start focusing our energies as a Congress.

Mr. REID. Madam President, today we debate the nomination of David Ogden to be the Deputy Attorney General of the United States.

Mr. Ogden is highly qualified for this important job. He is a graduate of Harvard Law School and clerked on the Supreme Court for Justice Harry Blackmun. During the Clinton Administration, he served as the Assistant Attorney General for the Civil Division and as chief of staff to the Attorney General.

He also previously served as Deputy General Counsel at the Department of Defense, so he has a keen appreciation for the national security issues that he will face at DOJ. He has an excellent reputation among his fellow lawyers and is supported by a number of former Republican Justice Department officials.

It is surprising to me that we need to spend more than a full day debating