

the conference. Hopefully, something will come out of that.

Did the Senate pass a prescription drug bill? No. Was it marked up in the Finance Committee? No. Did we have a markup? Did Members on the Finance Committee, some of whom have experience and expertise on prescription drugs and Medicare—every major Medicare expansion has passed through the Finance Committee in a bipartisan vote. We did not have a markup this year. We did not even have a chance to offer amendments. Yet we spent 2, 3, 4 weeks on the floor trying to mark up something on the floor with no result, with no prescription drug benefit being offered. The House was able to pass it. We were not.

The same thing is true for the Medicare give-back bill. The House was able to do that, in conjunction with the prescription drugs. Some are saying let's put together a give-back bill and run that through.

We are going to give providers, hospitals, and doctors more money, but we are not going to give prescription drugs to seniors who really need them, who do not have them, or who are maybe low-income? I am not sure that is very fair.

The Senate is flat not working.

In the Finance Committee last week, we are going to have a small business bill. Two or three Senators put together a bill, \$16 billion. There are some tax increases. There was no consensus whatsoever in doing it, except maybe to help somebody politically, but it was not a question of, is this really going to stimulate small businesses?

Most people realize it is a stalking horse for a person to offer a minimum wage increase which really would hurt small business.

I look at the number of judges, and we have confirmed 78 judges. Some say that is great. In President Bush's first 2 years, 78 judges have been confirmed, which is 61 percent of the judges that he has nominated. Maybe that sounds pretty good, but in looking at President Clinton, he got 129 judges in his first 2 years. He got 90 percent of his judges; President Bush has 61 percent. President Bush 1 got 71 judges. That was 93 percent of the judges he nominated. President Reagan got 89 judges, which was 98 percent of the judges he nominated in his first 2 years, but President Bush only has 61 percent.

When it comes to circuit court judges, the President only has 14 of 32. He has 43 percent of his circuit court judges confirmed. For whatever reason, it seems as if the majority, the Democrats on the Judiciary Committee, do not want circuit court judges to be appointed by President Bush, so they are holding up several outstanding, well-qualified nominees, for ages.

Miguel Estrada is finally going to get a hearing on Thursday. He was nominated a year ago May. He has argued 15 cases before the Supreme Court. He has outstanding qualifications, graduated

the top of his class from Columbia and Harvard, was an assistant U.S. attorney, and an assistant solicitor. He finally gets to have a hearing.

Then there is John Roberts who was nominated a year ago May. He has argued 35 cases before the Supreme Court, and he is yet to get a hearing, probably will not get a hearing this year. What is fair about that?

When people are patting themselves on the back because we have confirmed 78 judges and they are saying that is a lot, well, not when Bill Clinton got 90 percent and President Bush gets 61 percent; not when the current President Bush gets 43 percent of his circuit court judges and President Clinton got 86 percent. President Bush 1 and President Reagan both got 95 percent of their circuit court judges.

All of a sudden, when it comes to circuit court judges, we are just going to go slow on those; they are going to have to wait a year and a half to get a hearing, if they get a hearing. I do not think that is fair.

If we add together the fact that we have not done a budget, we have not done appropriations bills, we have not been confirming the number of judges that we traditionally have for the previous three Presidents, when we have not done a prescription drug bill, when we have not marked up an energy bill through the committee so it is stuck in conference, this Congress, this Senate, has not been working.

For people to say it is the President's fault or it is the House's fault, I disagree. The House has been pretty productive in their legislative efforts. They passed a prescription drug bill. They passed a budget. They have passed more appropriations bills than we have, and they would have passed more had we passed a budget. If this Senate would have passed a budget—which, incidentally, 60 votes are not needed to pass a budget. Fifty-one votes are needed to pass a budget. If this Senate would have passed a budget, these appropriations bills could have gone forward.

To cast aspersions blaming the House or the President for not getting the work done, the blame belongs right here. The Senate has not done its work. We have not passed a budget. We have not passed appropriations bills. Next Monday is the end of the fiscal year. Shame on us. This is the first year I have been in the Senate that we have not gotten our work even close to being done. It is not as though the bills are stuck in conference and we have not resolved the differences. We have not gotten the bills out of the Senate, and that is really not very acceptable.

The Senate needs to work. We need to do our work. We have not done our work, certainly this past year.

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

The PRESIDING OFFICER (Ms. CANTWELL). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. REID. Madam President, we have a number of Members on the minority side who wish to speak. The Senator from New Hampshire has been waiting for quite some time. He actually wants to offer an amendment on this bill. With the Gramm amendment pending, we would rather he didn't do that at this time. It is my understanding Senator DEWINE wishes to speak as in morning business.

Mr. DEWINE. Actually, it is on the bill.

Mr. REID. On the bill? You are not planning to offer an amendment or anything at this stage?

Mr. DEWINE. No, I am not offering an amendment.

Mr. REID. I see that the floor staff has returned. Could we have the ability to enter into an agreement at this stage?

Mr. GREGG. I suggest that I speak for 10 minutes with the understanding that no amendment be offered, and the Senator from Ohio be allowed to speak for 10 minutes with the understanding that no amendment will be offered.

Mr. REID. It is my understanding the Senator wishes more than 10 minutes.

Mr. GREGG. Twenty minutes?

Mr. DEWINE. Fifteen.

Mr. REID. Madam President, I ask unanimous consent that—we don't have the agreement yet worked out—the Senator from New Hampshire be recognized for up to 10 minutes to speak as in morning business and that the Senator from Ohio—it doesn't matter, you can speak on the bill if you would rather. We are on the bill, so the Senator from New Hampshire will be allowed to speak for up to 10 minutes on the bill, and then the Senator from Ohio will be allowed to speak for up to 15 minutes on the bill. There would be no amendments offered by the two Senators, and following the statement of the Senator from Ohio, the Senator from Nevada would be recognized.

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

HOMELAND SECURITY ACT OF 2002—Continued

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

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

Mr. GREGG. Madam President, I thank the leader for his courtesy in orchestrating this so I can speak briefly. I hope to offer an amendment, and I

want to outline what the amendment is. I understand that the parliamentary situation, or the order of events, is that Senator GRAMM has the first amendment and, until that is worked out, this amendment will not necessarily be in order.

This amendment will address a very significant issue. It is a sense-of-the-Senate amendment dealing with the question of how we are dealing with the national policy on the smallpox vaccination.

As many people in America are probably aware, smallpox is probably one of the most virulent potential biological weapons that can be used anywhere in the world. It had, however, been significantly contracted in its availability. There were only two sites that actually possessed the actual smallpox germ; one was in Russia and the other was in the United States. Both of those were considered to be very secure. There is, however, concern that other individuals in the world may be trying to develop a smallpox strain, and if they are able to do that, the potential for devastating biological attack would be overwhelming.

I think it is important that people understand, as a preface to this issue, that, if a smallpox epidemic—or even a single incident of smallpox—breaks out anywhere in the world, it is reasonable to assume today that it is breaking out because there is somebody who has possession over the smallpox strain and is willing to use it in an aggressive, violent way and is willing to use it in a terrorist act. In other words, there is no way today you could have a natural breakout of smallpox anywhere in the world.

If, for instance, a single case of smallpox were found somewhere on the North American continent, one could immediately presume that terrorists had possession of the smallpox disease and were willing to spread it. That has a huge potential for loss of life.

Smallpox is a disease that spreads extremely quickly and is hard to control. How do we address this? Essentially, because we thought we had beaten smallpox as a disease, we didn't have in place a large stockpile of vaccination as a nation, or even across the world. There is very little stockpile of vaccine. We did have some stockpile and it was quite old—approximately 15 to 30 years old. It was a small amount. But after determination, it is now thought that even that small amount can be subdivided and we can produce maybe as much as 70 million doses.

We are in the process of developing, on the production side of the agenda in the U.S., with the pharmaceutical companies—and not only here but overseas—the capacity to bring online large amounts of dosage of smallpox vaccine. We expect that we will have enough dosage of smallpox vaccine within a relatively short time that, if we desire to do so, we could vaccinate every individual in our Nation.

Why don't we immediately do that and make that our national policy?

The reason the decision has not been made to go forward to vaccinate the entire country is that there is a downside to the smallpox vaccine as it is presently developed; that is, approximately 1 percent of the people vaccinated, we know, will be significantly harmed and possibly even die. If you vaccinate 260 million people, you are looking at a significant death toll—in the hundreds, at a minimum—as a result of that vaccination regime. We know who those people usually are. They are usually people suffering from certain types of allergies, and we know they are people who are aged, infirm, or who have other weaknesses in their immune systems.

What has been the policy decision so far? The first policy decision, on which I greatly congratulate this Congress and the administration, was to put in place the regime so we could produce an adequate amount of vaccine. The second policy put forward as the concept of how we will address the smallpox breakout is that we will do a concentric circular event. In other words, we will surround the incident of smallpox with a vaccination of everybody in the area in an expanding circle. It is a pebble in a pool approach. If somebody threw a pebble in the small pond, it spreads outward. In the event of a smallpox outbreak, we are going to vaccinate everybody around the people infected, hopefully, containing the output. That is the plan as it is presently proposed. In addition, the plan is to vaccinate all first responders in the country.

What is the problem with that plan? It is very unlikely that our public health capability would allow us to vaccinate enough people fast enough to make the concentric circle approach be absolutely secure. We would probably experience an expansive medical emergency that would lead to a fairly significant loss of life should a single case of smallpox break out in the United States.

I am not saying it is not a reasonable approach, but it is an approach that probably has a significant likelihood that it will not be totally successful. We will have a significant success rate, but the success rate will be limited. Therefore, the loss of life will still be significant.

What is America to do? Basically, I think we can place confidence in our public health community that the vaccines are being developed and brought online. In addition, I believe we should, as a national policy, be willing to say to any American, once we have the smallpox vaccine in place, that in order to vaccinate the population generally—and it will be in place certainly by next June, and maybe earlier—we should be able to say to any citizen who feels strongly that they want to be vaccinated that you may be vaccinated.

In addition to the concentric circle approach, which I endorse, we should be able to say, if you are an American

citizen, you have the right to go to your medical practitioner and ask them for a smallpox vaccination. If the physician determines you are not in an adverse category and that it is appropriate for you, thus, limiting the loss of life as a result of the 1 percent problem, then you ought to be able to get that vaccination.

That is what this sense of the Senate says. It says that, once we have obtained the necessary dosage level, which has been federalized, in order to vaccinate our population generally, then any American citizen will have the right to go to their physician and obtain that vaccine and be vaccinated.

It makes great sense to do this because, as a practical matter, it will first bring a calmness to the circumstance, which is important. Secondly, should there be an outbreak, it will obviously mean that a large percentage of America has been vaccinated already. Many people, I suspect, will take advantage of that option if it is out there.

Thirdly, I think it is good public health policy. I also think it should be done at no charge. I believe we, as a government, have an obligation to protect our citizens as a primary responsibility and, therefore, the Federal Government should pick up the cost of the vaccine as it is distributed.

So that is what this sense of the Senate says. It doesn't say that the concentric circle approach isn't good. It says, in addition to that, we should give all Americans, once we have obtained the vaccine capability that we know we are going to obtain, we should give them, in consultation with their physician, the opportunity to be vaccinated. I believe that is good health policy.

Certainly, as we proceed down the road and debate this homeland security bill, I intend to take the opportunity to offer this sense-of-the-Senate amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, approximately 3 hours ago, the Senate passed the Lieberman-McCain amendment to create an independent national commission to investigate the events leading to and following the September 11 terrorist attacks. I voted in favor of that amendment. I come to the floor this afternoon to briefly explain why and explain what I hope that commission will do and what I hope it won't spend a lot of time doing.

I believe that commission should focus on what the joint Senate-House Intelligence Committee's investigation focused on in looking at the September 11 tragedy.

As a member of that committee, I have argued that we should be looking at not just what led up to September 11, not just finding out what the failures were, but also, and much more importantly, looking toward the future

and trying to determine what we can do to change, what we can do to improve our intelligence operation, our intelligence network.

I believe that should be the same focus of the national commission. The national commission will inherit the work our joint committee has done. Shortly, we will be done with our work. The national commission will not only have our work, but it will have other information available to it. It will have the information that has been dug up by some very good reporters. It will have additional information, and so the foundation clearly will be laid.

The commission will not have to spend a lot of time rehashing the errors that were made. What I hope the commission will spend most of its time on, though, is the future. I would like to talk a little bit about that future this afternoon and what I think we need to do.

Knowing what failures have occurred in the past certainly is vital, but it is not enough. Knowing what we should do in the future is really what is important. The creation of this independent commission presents us with the opportunity to build on our current congressional intelligence investigation.

One of the reasons I did vote in favor of this commission is that I believe our Senate and House intelligence investigation stopped too early. We had a deadline. I thought the deadline was a mistake. I still think it is a mistake. Because we have that deadline, we have not been able to focus on the big picture issues of where we need to go in this country.

The language of the McCain-Lieberman amendment that was adopted this afternoon clearly provides the commission with the opportunity to get into these big picture issues.

I quote from that amendment. The amendment specifies the commission may

... identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government.

There is more to that. Those are words that I think are very important because those words, if this becomes law, will give this commission a great opportunity to look at these big picture issues about which I am talking.

What am I talking about? Let me give some examples. I believe the commission should take a serious look at the role of the Director of Central Intelligence. I believe it is time to give the DCI the necessary authority and the ability to truly direct our overall intelligence operations. Quite simply, we need to empower the DCI to do the job.

We all know the facts. Currently, the DCI, while he is in charge of our intelligence, only controls about 15 to 20 percent of the budget. This is an issue that has to be examined, and it has to be looked at, no matter how people

come down on this issue. I know it is a contentious issue, and it may divide this Senate, it may divide the commission, but we need to look at it.

We had the opportunity in our joint committee the other day to hear from Sandy Berger, Anthony Lake, and Brent Scowcroft on a panel. All three of them said with various degrees of language that we need to make a change in the DCI, we need to make the DCI more powerful, we need to enable him to get the job done. That is an issue at which we should look.

Second, I believe we must seriously examine the long-term resource issues that confront us, not just now but over the long haul—over the next decade, maybe over the next two decades, or three decades. Are we providing the resources we need for our intelligence community? And are we providing them in the right way? Do they know they are going to have the necessary resources, as much as anybody can ever know year to year with Congress? But do they have some indication those resources are going to be there so they can get the job done? How much resources do they, in fact, need to protect us?

Maybe a good way of looking at it is to say, if tomorrow we were struck again and we are all in shock again, what would be our reaction? What would we do to the budget then? Maybe we need to ask ourselves that question and go ahead and do it now.

The next question I hope the commission looks at is: Do we have the human resources available within the agencies themselves? Are we going to get the necessary people because ultimately it comes down to people. We have good people. They are doing a good job. They are working 14, 15, 16 hours a day, but there is only so much they can do. How many more people do we need? My guess is we need a lot more people based on what I have seen. In the counterterrorism center, for example, in the CIA, FBI, we need a lot more people.

Do we have the right technology is another question the commission should look at, and do we have enough of it to get the job done in the new world in which we live? The technology the FBI has is not good. If any major business in this country had that technology, somebody would be fired; a lot of people would be fired. It is shameful. It is wrong. It is not fair to the employees, and it is not fair to the American people. We are, frankly, responsible for that. We are responsible for that failure. We have an obligation to change that. That is another issue at which this commission should look.

The commission should ask us and the American people: What is our long-term commitment to intelligence?

Finally, I think the commission needs to examine the Foreign Intelligence Surveillance Act, the FISA statute, and determine what changes are necessary to make sure we are getting intelligence from this source to

help prevent future attacks. We made improvements in FISA. The Patriot Act was an improvement. Quite frankly, Congress has been derelict in its duty over two decades to have good oversight over FISA. It has been a hidden court, as it was designed to be; a secret court, as it was designed to be. Yet we have not figured out some way through the Intelligence Committees to have good oversight to find out how the law we wrote as representatives of the American people is truly being interpreted.

For the first time we have a court decision that has come out of the FISA court. It is not public, but we can at least look at it. It is the first one, to my knowledge, that has been published in 2 decades. I do not happen to agree with the decision, but we can look at it. It is being appealed. We will have an opportunity to see what the court of appeals says about that, but at least that part of the debate is out there.

We must continue to look for ways to fulfill our oversight responsibility in the Congress. That is an issue that the commission should look at as well.

These are a few of the issues I think the commission needs to look at. Let me say, however, it is not just the commission's responsibility. I voted for this amendment, not because I felt it would be solely the commission's responsibility to look at these issues; I believe the Senate Intelligence Committee has an obligation to look at these big-picture issues in the months and years ahead. I believe the House has the same obligation. I simply believed that with an additional commission issuing reports in 6 months, 12 months, 18 months, that would be an added voice, an added set of eyes, more expertise, to look at some of these issues this country should be debating.

Ultimately, we need a serious national debate about all of these issues and so many more, even those that are outside the realm of the intelligence community. In examining the intelligence component, if we have learned anything from September 11, it is that our security, our safety, and the safety of our loved ones, is intrinsically linked to the quality of that intelligence. So we must do all we can to improve the quality of that intelligence. The ability to share that information with the appropriate agencies is involved with our national security. As Members of the House and Senate Intelligence Committees, as Members of this Senate, we have an obligation to examine these issues. We must debate them. The proposed commission can certainly play a productive role in these debates and in these investigations. Therefore, I was pleased this afternoon to support its creation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask unanimous consent that following the cloture vote on the Lieberman amendment tomorrow, if cloture is not invoked, the Senate remain on the homeland defense bill and

Senator GRAMM of Texas be recognized to offer an amendment; that there be two hours of debate equally divided between Senators GRAMM and LIEBERMAN or their designees; that at the conclusion of that time the amendment continue to be debatable and Senator DASCHLE or his designee be recognized.

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

Mr. REID. Mr. President, the amendment we have been waiting for for some time will be offered in the morning, or as soon as the vote is completed, as the unanimous consent request indicated.

It appears the two managers have some amendments they can clear on this homeland security bill. That being the case, we will stay on the bill. When the amendments are cleared, we will go to a period for morning business until Senators have said all they wish to say, and then we will recess until tomorrow. We hope this is the beginning of the end of this bill. I think we have made progress to get to this point. As I have indicated, we have been trying to get this amendment now for about the second week, so finally we are there. This is a big amendment. We will determine how it is going to be disposed of sometime tomorrow.

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.

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.

ORDER OF PROCEDURE

Mr. REID. Mr. President, Senator DORGAN is here and wishes to speak as if in morning business. I ask unanimous consent that he be recognized for up to 20 minutes, and that following his statement, we return to the bill.

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

The Senator from North Dakota.

TERRORISM AND THE ECONOMY

Mr. DORGAN. Mr. President, I would like to speak about several important issues facing the Senate at the moment: namely, the situation with Iraq, and the state of our economy.

First, let me speak about Iraq. And let me begin by saying that I don't think there is any question that Saddam Hussein is not following the terms of surrender at the end of the gulf war. He has failed to live up to any one of those terms or conditions.

I was at the Incirlik Base in Turkey and visited with the pilots who are flying over the northern area of Iraq enforcing the no-fly zone. These pilots fly in harm's way. They are often shot at by the ground forces of the Iraqi Army. The fact is, Saddam Hussein has violated virtually everything to which he previously agreed.

I don't think there is any question that this is a bad person, who poses a real threat. He wants access to nuclear weapons. He has access, apparently, to chemical and biological weapons. And the President says we ought to do something about this threat posed by Saddam Hussein. I agree that we should. The question is, How?

The President went to the United Nations. And I think that was the right thing to do. The Secretary of State is now asking the Security Council to join us and pass another enforcement resolution so we can, with other countries, begin to enforce coercive inspections in Iraq to make sure that, if they have weapons of mass destruction, they are destroyed, and to make sure they are never able to acquire weapons of mass destruction, especially nuclear weapons.

But there are other avenues that we should also pursue. I have thought for 10 years, since the end of the gulf war, that this country should press for the formation of an international criminal tribunal at the United Nations to indict and try Saddam Hussein as a war criminal.

I don't know whether at the end of the day there is going to be a regime change in Iraq or not. I hope there is. I believe there ought to be a regime change, but I am not sure whether that is going to happen. If it doesn't happen, I still think we ought to push for the creation of an international war crimes tribunal, so that Saddam Hussein is indicted and convicted.

There is ample evidence—both in this country and also in the United Nations—to indict and convict this man of war crimes.

I spoke on the floor some years ago about a young boy and his family who lay dead on the ground in Iraq—victims of weapons of mass destruction unleashed by Saddam Hussein that killed thousands of those people. He is the only leader I know of in this world who has used weapons of mass destruction against his own citizens. So there is ample evidence for that and other reasons to indict, try, and convict Saddam Hussein for crimes against humanity.

I have never understood the reluctance of this Government to push ahead to do that. I have never understood that. Senator SPECTER from Pennsylvania and I offered a resolution—I think it was about 5 years ago in the Senate—calling on the State Department to go to the United Nations and attempt to get a war crimes tribunal so we could indict, try, and convict this man as a convicted war criminal. I think whenever we talk about Saddam Hussein, we should be talking about a convicted war criminal.

Had we done what we should have done 10 years ago and 5 years ago, that is what we would now call him, because the evidence is so substantial about what he has done to his own people, to people in the region, to his neighbors, the weapons he has used—there is just no question that this man, even in

absentia, would be tried and found guilty as a war criminal.

I think even today our State Department should press that case, even as we are pressing for coercive inspections and contemplating taking action again against the country of Iraq.

I have asked my staff to talk to the staff of the Senator from Pennsylvania about offering that resolution once again in the Senate. It passed the Senate 4 or 5 years ago without a dissenting vote. Yet nothing has happened with respect to Saddam Hussein and Iraq and the creation of a war crimes tribunal at the United Nations to indict and to try him.

Let me turn to the economy for a moment. Because while the Iraq issue is vitally important, we have other very big challenges that are largely being ignored. The President and some in this Chamber don't want to talk about this, but the fact is our economy is in some significant trouble. We have some people whose responsibility it is to be involved in fiscal policy who say: What trouble? Things are going just fine. This is just a little bit of a correction. Things will be fine. Just wait and do nothing. Things will work their way out.

The fact is, we have come to an intersection in this country unlike any we have ever arrived at before. Just a year and a half ago, President Bush proposed a fiscal policy. He came to office, and said: What I see in this country is 10 years of surpluses, and big ones at that. That money belongs to the taxpayer. Let us give it back. Let us have a \$1.7 billion tax cut.

I did not vote for that because I said I thought we ought to be a little more conservative. I don't think we can see 3 months ahead, let alone 10 years ahead. I think the conservative thing to do would be to attempt to be a little more moderate in how we deal with fiscal policy and not lock in a \$1.7 billion reduction in revenue.

I lost that argument. The majority in this Chamber and the other Chamber voted for a \$1.7 billion tax cut over 10 years. The President celebrated and his supporters celebrated. Everyone talked about how wonderful that was. Mr. Greenspan, down at the Federal Reserve Board, thought that was fine, too.

It wasn't very much past that—some months past that—when we discovered the country was in a recession. If we had been in a recession at the time we were talking about these expected 10 years of surpluses, would we have made a different decision? Maybe.

Not much more than a couple of months beyond that we had the terrorist attacks against our country on September 11. Had we known we were going to face a recession and the terrorist attacks on our country on September 11 that caused such a devastating loss of life, would we have said let us put in place a \$1.7 billion tax cut? I think we might have made different decisions.