

order, we go back to the pending bill. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Then I do call for the regular order.

HOMELAND SECURITY ACT OF  
2002—Continued

The PRESIDING OFFICER. The Senate resumes consideration of the pending bill.

Mr. REID. Was there a unanimous consent request, Madam President?

The PRESIDING OFFICER. The Senator from Pennsylvania asked for the regular order.

Mr. REID. What is the regular order?

The PRESIDING OFFICER. The bill, H.R. 5005.

Mr. REID. If my friend would allow me to speak, it is my understanding that we were in a period of morning business with Senators allowed to speak for up to 10 minutes each. Would it not take consent to get out of that?

The PRESIDING OFFICER. Morning business occurs by consent. The regular order was the legislation.

Mr. SPECTER. Madam President, I think I have the floor. If I might just comment, what I would like to do is speak on the bill.

Mr. REID. We would like to hear you speak. But I say to my friend, there would be no amendments. We have the Thompson amendment pending, and we would have to have consent to set that aside, or I guess you could offer a second-degree to Senator THOMPSON's amendment. But you are not planning to offer an amendment?

Mr. SPECTER. Madam President, I don't plan to offer any amendments or anything unusual. I want to make some comments on the pending bill. I don't plan to do anything that would require the presence of anybody here to safeguard their interests. I don't wish to do anything that would be construed as contrary to anybody's interest. I would like to have people here who are on the bill.

Mr. REID. I only say I am sorry I have to leave the floor because I would love to hear the statement of the Senator from Pennsylvania. I say this as affirmatively and sincerely as possible. The Senator always makes statements that are good and direct, and I am sorry to have interrupted him, but I didn't know what was going on.

Mr. SPECTER. I am sorry the Senator from Nevada will not be here to hear my presentation, but there are 97 other Senators who could come. Counting the Presiding Officer and myself and the Senator from Nevada, that leaves 97 others. That is probably more people than are watching on C-SPAN 2, as a matter of fact, Madam President.

AMENDMENT NO. 4513

The pending amendment seeks to speak to the provisions of the bill relating to a National Office for Combating Terrorism, and I believe the thrust of the provisions for this na-

tional office are well founded as a coordinating mechanism. But after discussing the matter in some detail with the author of the bill, the distinguished senior Senator from Florida, and considering the views of the President, who does not want to have a confirmed officer in the West Wing but is looking for an adviser, as former Governor Ridge who is now his adviser, as Dr. Condoleezza Rice is the National Security Adviser—it seems to me there are strong reasons for us to avoid this legislation to have a Secretary of Homeland Security who will be confirmed and then have a Director for the National Office for Combating Terrorism, because all of these duties, in my opinion, can be handled by the Secretary of Homeland Security. So the objectives which the senior Senator from Florida seeks to accomplish can be accomplished without adding this additional office. I know the President does not want another officer confirmed by the Senate. He didn't want one in the first place, and didn't want a Department of Homeland Security, but now has acceded.

Senator LIEBERMAN and I introduced the legislation for a Department of Homeland Security and a Secretary of Homeland Security last October, and eventually the President acceded to that necessity, and there is now a bill on the floor.

But as I look over the responsibilities which the senior Senator from Florida has assigned to the Director of the National Office for Combating Terrorism, it is my view that these duties can be handled by the Secretary of Homeland Security. The responsibilities which are set out in section 201(c):

To develop national objectives and policies for combating terrorism.

I think that is an appropriate function for the Secretary.

To direct . . . [the] assessment of terrorist threats and vulnerabilities to those threats . . .

Again, I think that is something that can be handled by the Secretary.

To coordinate . . . the implementation . . . of the Strategy by agencies with responsibilities for combating terrorism . . .

Again, I think that is something the Secretary can do.

To work with agencies, including the Environmental Protection Agency, to ensure that appropriate actions are taken to address vulnerabilities identified by the Directorate of Critical Infrastructure Protection within the Department.

Again, that is something which the Secretary can handle.

To coordinate, with the advice of the Secretary, the development of a comprehensive annual budget for the programs and activities under the Strategy, including the budgets of the military departments and agencies within the National Foreign Intelligence Program relating to international terrorism . . .

That can be handled by the Secretary. In fact, this provision calls for coordination with the Secretary.

The provision does exclude military programs, projects or activities relat-

ing to force protection. This is a controversial item, as to whether there ought to be somebody with budget authority. I think it is a good idea. Right now there is diverse budget authority with a larger share of it on the intelligence agencies coming out of the Department of Defense. I believe it would be very useful to have that centralized.

When I chaired the Intelligence Committee in the 104th Congress, I proposed legislation which would have brought all of the intelligence agencies under one umbrella, the Central Intelligence Agency. Now I think there is an opportunity to do that with the new Department of Homeland Security since we are taking a fresh look at this area. I know there are objections to giving budget authority to anyone on an overall basis, but it would be my hope that this provision would stay—but it would stay under the dominion of the Secretary of Homeland Security.

The other responsibilities of the Director of the National Office for Combating Terrorism are:

To exercise funding authority for Federal terrorism prevention and response agencies . . .

Stated simply, all of the functions of the Director of the National Office for Combating Terrorism, in my view, can be handled by the Secretary of Homeland Security. I think those objectives are sound.

It is my hope that we will legislate here to put under the umbrella of the Secretary of Homeland Security the necessary authority to protect against terrorists. It is my judgment that had all of the dots been under one umbrella, there would have been a veritable blueprint for what happened on September 11 and that September 11 might well have been prevented. This is the time, with the new Department of Homeland Security to be established, that we have a chance to implement what so many people have proposed.

My idea to bring all of the intelligence agencies under one umbrella in the legislation, which I proposed in the 104th Congress when I chaired the Intelligence Committee, is an idea which has been proposed by many. At the moment, there is on the President's desk a comprehensive proposal to accomplish just that. But the reality is that the turf wars involving the various agencies are so fierce that this is never accomplished. Now we have a chance to do it.

Had the one umbrella been present to identify the FBI Phoenix memorandum—where there was a flight student with a big picture of Osama bin Laden and indicators of potential terrorist activity—had that, combined with the two men identified, who were later hijackers on September 11, in Kuala Lumpur where the CIA never told the FBI or the INS—had that been added to the records—the National Security Agency got it on September 10; it wasn't translated as a threat that something would happen the next day, perhaps later, until the 12th—especially with the information which

could have been obtained, had a warrant been issued for the computer of Zacarias Moussaoui and for the search of his premises—there was a virtual treasure trove of information linking Moussaoui to al-Qaida.

We have learned a very different lesson from 9/11. Now is the time for the Congress to change it. We simply have to override the various Federal agencies that are fighting for their turf. The stakes now are too serious.

We have an enormous responsibility in the Congress to do everything we can to see to it that there is no recurrence of 9/11. We have action to be taken if there is a biological attack. We have worked on various antidotes for various biological weapons—smallpox and anthrax. But if we have to respond, it is a 99 percent loss. What we have to do is prevent it.

The intelligence agencies that want to maintain their own sovereignty just ought to change that attitude. The legislation which has been proposed would put all of these analysis sections under the Secretary of Homeland Security. That is what ought to be done. That can be done in this bill.

There was a meeting on July 31 with the President, Governor Ridge, and Members of Congress, where we talked about these ideas.

I ask unanimous consent that the full text of this letter be printed in the RECORD at the conclusion of my statement.

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

(See Exhibit 1.)

Mr. SPECTER. Mr. President, there is a critical line on the letter I have written to Governor Ridge. I will read just a little bit of it.

Dear Tom:

I was very pleased to hear the President's affirmative response yesterday to the proposal to have analysts from every intelligence agency (CIA, FBI, DIA, etc) under the umbrella of the Department of Homeland Security with the Secretary having the authority to direct those intelligence agencies to supply his Department with the requisite intelligence data.

This doesn't mean that Homeland Security will have authority over CIA agents. They will remain with the CIA. It doesn't mean the Secretary of Homeland Security would have the direction of the FBI agents or any other agents. They will all remain in their Departments. But the analysts will all come together under one roof. There will be nothing to stop the CIA from having analysts under the CIA roof. But they will have to be CIA agents under the roof of the Director of Homeland Security so that all of the analysts are there and can put the dots together in one place.

The critical paragraph in the letter set forth is:

Responsibilities.—The Directorate of Intelligence . . . . On behalf of the Secretary, subject to disapproval by the President, directing the agencies described under subsection (a)(1)(B) to provide intelligence information, analyses of intelligence information and such other intelligence-related information as the Directorate of Intelligence deems necessary.

That is the critical part of it.

The other way of articulating the idea would be to say that the President approves the Secretary having this authority. But it is unrealistic to expect the President to come in and make an analysis and take affirmative action. But it is effective to get the same job done if the problem is sufficient to have the matter disapproved by the President.

I don't think you really have to have statutory language because the President directs anybody as he chooses. They are going to be bound to carry out his orders. But this would give the Secretary of Homeland Security umbrella authority, as I say, subject to disapproval of the President.

Although I do think the senior Senator from Florida had a good idea and purpose in the National Office for Combating Terrorism, the better policy is to leave these responsibilities to the Secretary of Homeland Security, a separate Department. The President is then free to have an adviser on homeland security—as he currently does, a position filled in the West Wing by Governor Ridge.

#### EXHIBIT I

U.S. SENATE,

Washington, DC, August 1, 2002.

Hon. TOM RIDGE,  
Director of Homeland Security,  
Washington, DC.

DEAR TOM: I was very pleased to hear the President's affirmative response yesterday to the proposal to have analysts from every intelligence agency (CIA, FBI, DIA, etc.) under the umbrella of the Department of Homeland Security with the Secretary having the authority to direct those intelligence agencies to supply his Department with the requisite intelligence data.

As I said in the meeting in the Cabinet Room yesterday, I think that had all of the intelligence information known prior to September 11th been under one umbrella, the terrorist attacks of September 11th might have been prevented.

Senator Thompson, as I understood him, did not disagree with that ultimate approach except to express the view that he thought that changes in the structure of the intelligence community should await further studies. My own strongly held view is that we have a unique opportunity to make the changes in the intelligence community now because of the imminent terrorist threats; and, if we don't act now, we will go back to business as usual.

As you and I discussed in our meeting of July 29, 2002, there have been many proposals to place the intelligence agencies under one umbrella, including legislation which I introduced in 1996 when I chaired the Intelligence Committee, and the current proposals which have been made by General Scowcroft.

I suggest that Section 132(b) of the bill reported by the Governmental Affairs Committee be modified by adding at the beginning a new paragraph (1) to read as follows:

(b) RESPONSIBILITIES:—The Directorate of Intelligence shall be responsible for the following:

(1) On behalf of the Secretary, subject to disapproval by the President, directing the agencies described under subsection (a)(1)(B) to provide intelligence information, analyses of intelligence information and such other intelligence-related information as the Directorate of Intelligence deems necessary.

I am sending copies of this letter to Senator Lieberman and Senator Thompson so that we may all discuss these issues further.

My best.

Sincerely,

ARLEN SPECTER.

Mr. NELSON of Florida. Mr. President, while our troops have had enormous success abroad, the war on terror, obviously, is not over. We are just beginning. We must do everything we can to prevent future attacks on the homeland.

Tomorrow is going to commemorate that awful experience. My attention over the weekend was riveted to an article in one of the country's major newspapers that reported on a debriefing of one of the al-Qaeda detainees who had indicated that the fourth airplane, the one that crashed in Pennsylvania, had as its target the U.S. Capitol.

How many of us on that day were working in the U.S. Capitol? I was in a meeting on the west front of the Capitol, only 30 paces from where I am now standing in the Chamber of the Senate. It was a meeting attended by about 15, chaired by the majority leader. We had already seen the television images of the World Trade Center, but we continued our meeting.

Someone burst in the door and said: "The Pentagon has been hit." We leapt to the windows overlooking the west front of the Capitol, overlooking the mall in the direction of the Pentagon, and saw the black smoke rising on the other side of the Potomac.

Interestingly, my immediate reaction was to leap to a telephone to try to get word to my wife, Grace. Only 5 days earlier, we had moved into an apartment overlooking the southwest corner of the Pentagon. My message to her was—and we didn't even have a telephone in the apartment, since we had just moved in—to get into the basement garage because, of course, I didn't know what was happening on that side of the Potomac.

In the meantime, Grace Nelson is getting dressed in the apartment. She hears the airplane. She said it sounded so loud, as if it was going to hit the apartment. And the line of flight was very close to the apartment. She heard the impact. She ran to the window and saw the whole thing.

When she saw the people streaming out of the Pentagon, her immediate response, which is the great patriotic instinct of my wife, was: What can I do to go down and help those people?

That, of course, was a riveting experience, like any that you have had in your adult life. I was in college at the time of the assassination of President Kennedy. I can tell you exactly where I was when we received the word. So, too, on any other tragic event, such as the destruction of the space shuttle *Challenger*. And so, too, Americans will remember exactly what they were doing and where they were at the time of receiving the news that the Nation was under attack a year ago.

This war is going to be a long one, and it is going to be very difficult because it is a new kind of war. We don't have the luxury we have had for two centuries of two big oceans protecting us from our enemies, for now the enemies have figured out a way to infiltrate within. Of course, all of the U.S. interests and assets around the world, including our ambassadors, are targets we have to protect.

It is appropriate that this legislation is being considered at this time. What do we have to do to help protect future attacks on U.S. soil?

Clearly, there was a colossal intelligence failure on September 11. That is primarily what we need to address. The inexcusable bureaucratic inefficiencies and inability of one hand of the bureaucracy to know what the other hand was doing, all of that has to be ironed out. In the briefings that we have had, I have some degree of confidence that it is being ironed out. It better be. We have no choice. For the only way to thwart the terrorists is to find out what they are going to do before they do it and stop them.

Combining this new threat also requires a more agile government. What we are about to do is undertake the largest governmental reorganization in the last five decades. This new department will combine 22 agencies, 170,000 people, with an annual budget of \$38 billion. But considering the seriousness of the threat and the scope of the restructuring, I must say that I am surprised by the administration's demands that this new Department of Homeland Security be run with minimal accountability to the American people, which includes accountability to this Congress.

There is something that we all swore to uphold when we took office: the Constitution of the United States. The political geniuses who gathered over 225 years ago fashioned a document that had checks and balances so that power could not be concentrated in any one branch of the Government.

So as we start to create this new, vast reorganization of the executive branch, we have to make it accountable to the American people by having it accountable to the Congress, with our oversight functions, with our appropriations functions, with our authorization functions, with all that has served this Nation so well since the beginning of our constitutional government in 1789.

I am concerned and a little bit surprised that the administration demands that they have it their way without the accountability, which is the checks and balances of the Constitution, necessary to the functioning of our constitutional government.

Many of us on both sides of the aisle believe this is an issue of great importance, involving such a massive reorganization of the Government that we must ensure that there are checks and balances. The American people deserve to know how this new department will

be managed and how the resources allocated to the war on terror are going to be used.

Transparency is essential to ensure that this new department is working. I am not sure that is the message that has come from the administration. It is going to be up to us, particularly those of us who feel so strongly about this.

We have heard a number of people talk about the great leadership of Senator LIEBERMAN, the chairman of the Governmental Affairs Committee, and, clearly, the man who not only believes daily and recites daily the U.S. Constitution but carries that Constitution with him wherever he goes, a man who has been in Congress for over 50 years, Senator BYRD, who has expressed his concerns. And there will be more, including mine that I am registering today.

I am afraid that the administration's bill—which, in essence, is the House of Representatives-passed bill—fails to adequately protect the nonhomeland mission of the Coast Guard. Think of that. The Coast Guard overseas a number of important maritime missions, which save countless lives each year, including search-and-rescue operations, Marine safety, and recreational boating safety initiatives.

Am I sensitive to this? You bet. Look how much coastline Florida has. I have not actually measured it against the California coastline, but I suspect ours is greater if not equal to the California coastline.

So is the search-and-rescue operation, Marine safety, recreational boating safety—a non-homeland-defense mission of the Coast Guard—important? Of course, but so is the Coast Guard's mission on law enforcement, which includes drug interdiction, and alien migrant interdiction, and general maritime law enforcement.

Would it not be nice if we in Florida were not sensitive, as we are, to drug interdiction and to alien migrant interdiction? Waves of people try to come to Florida's shores illegally—some with just cause, but of which the Coast Guard plays a very important role. As resources are transferred to the war on terror, we should not forget about protecting people from the nonterrorist threats that can be harmful to our communities.

The final plan to transfer the Coast Guard to a new Department must ensure, in my judgment, that law enforcement safety and transportation missions are not unreasonably compromised. That is why I think we have to adopt the Senate language and protect it then in the conference committee—ironing out the differences between the Senate and House versions.

In addition—and very importantly—the administration's language in the House bill completely undermines workers' rights. Guaranteeing the basic civil service rights of people hired to keep us safe does not and will not jeopardize national security.

What are we trying to protect? We are trying to protect the civil service

of this Federal Government from being politicized, which is the reason why the Hatch Act was passed years ago, decades ago, saying that there was going to be a barrier put up so that any administration, after the Hatch Act, was not going to be able to use the Federal bureaucracy for their political ends; thus, the Hatch Act was enacted.

What the administration's language does is take away those worker rights, those basic civil service rights, and that is not healthy, because it has been healthy, as we have seen how the Federal bureaucracy operates under those protections in the Hatch Act.

The House bill would grant the President a blank check to take away the civil service protections of nearly 170,000 employees of the new agency. I don't think that is in the interest of the country. That is not going to affect the national security. The vague authority granted to the President would exempt employees from traditional labor laws if he determined, without any explanation, that the workers' rights somehow adversely affect the Department's homeland security mission. That is not right for the workers of the new agency, and it is not right for the country.

Finally, the administration bill hangs consumers out to dry by limiting the liability of firms providing new antiterrorism technologies and devices because damages caused by untested technologies that fail to work would be restricted even in cases of gross negligence in the manufacture of those new technologies and equipment and apparatuses. This limited liability provision gives carte blanche then to fly-by-night companies looking to profit from 9/11 by selling products that, at best, do nothing and, at worst, could cause direct harm. I don't think we want to hang those consumers out to dry—indeed, much more than that, we don't want to harm those consumers.

As the clock ticks, the time becomes increasingly somber as we reflect back on what we were doing 365 days ago, what happened to us personally, and how we have changed not only as a nation but individually. I think it is important for us to look at the big picture and that as we fashion a bureaucratic response that is more flexible to protect our homeland, we do so in a wise and cautious fashion.

Mr. President, I yield the floor.

#### ORDER OF PROCEDURE

Mr. SPECTER. Mr. President, in the absence of any other Senator on the floor seeking recognition on the bill or, for that matter, any other purpose, I ask unanimous consent to proceed as if in morning business for 10 minutes.

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