that shows up now, today, that says there will be special liability protections for the pharmaceutical industry. And the majority leader of the House, Mr. ARMEY, says: Well, I put it in, but it wasn't my idea; it was the White House.

I am asking, was there a negotiation someplace, sometime, between some people, of which I am unaware? Because I have heard of no such negotiation by which that provision should have ended up in this bill.

I inquire of the Senator from Texas where this negotiation occurred. Who was involved in it? Who made the decision that a special protection for the pharmaceutical industry that just spent $16 million in the last election ought to be stuck in this bill? Who was involved in it?

The PRESIDING OFFICER. The time has expired. The Senator from Texas has 1 minute.

Mr. GRAMM. I am glad the Senator picked one with which I am totally familiar.

In the Senate bill, we had a provision where the Federal Government indemnified those manufacturers that produced items to be used in the war on terrorism whereby the taxpayer would pay liability that arose from it.

I was never much for that provision, but I was desperately trying to get the votes to prevail, and so I took that provision.

The House had a provision that limited liability, similar to what we did in World War II and what we have done in most major conflicts. When you produce an item for defense purposes, there is a limited liability. It seemed to me that, rather than the taxpayer bearing the burden, forcing these cases into Federal court and limiting liability was a preferable choice.

That is where the negotiation came from. This was not a provision out of the clear blue sky. We had a provision, they had a provision, and we took less liability protection than they had. This is a good provision of the bill.

Mrs. LINCOLN. Mr. President, I rise in support of cloture on the Homeland Security bill because our country needs a unified effort to defend our shores. But I want my colleagues on the other side of the aisle to know that I am ashamed of the tactics that you have used. And this Senator will not forget what you and your patrons in the pharmaceutical industry have done to this bill and to the American people in the dark of the night. It appears that the $12 million PhRMA donated during the last election cycle can buy more than a handful of House and Senate seats. It can also buy a sneak attack on people—autistic children—who have been harmed by vaccines.

I say to my friends across the aisle and to my friends in the pharmaceutical industry: sneaking this unrelated provision into critical legislation like Homeland Security is not the way to make good public policy. It is un-American, and something to be ashamed of.

Why should the parents of autistic children—children who were injured by thimerosal in vaccines—lose some of their legal options in the name of Homeland Security? They too care about the security of our nation, but you cannot doubt their love and concern for their precious vulnerable children. The homeland security bill is not an appropriate vehicle to make this change to the vaccine injury compensation program on behalf of one interest group.

HOMELAND SECURITY ACT OF 2002

Pending:

Thompson (for Gramm) Amendment No. 4901, in the nature of a substitute.

Lieberman/McCain Amendment No. 4902 (to Amendment No. 4901), to establish within the legislative branch the National Commission on Terrorist Attacks Upon the United States.

Dodd Amendment No. 4951 (to Amendment No. 4902), to provide for workforce enhancement grants to fire departments.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the substitute amendment No. 4901 to H.R. 5005, the Homeland Security legislation.

John Breaux, Ben Nelson of Nebraska, Larry E. Craig, Jon Kyl, Mike DeWine, Don Nickles, Craig Thomas, Rick Santorum, Trent Lott, Fred Thompson, Phil Gramm, Pete Domenici, Richard G. Lugar, Olympia J. Snowe, Mitch McConnell.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Thompson amendment, No. 4901, for H.R. 5005, an act to establish the Department of Homeland Security and for other purposes, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maine (Mr. KENNEDY), the Senator from Maine (Mr. KERRY), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Colorado (Mr. CAMPBELL) are necessarily absent.

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

The yeas and nays resulted—yeas 65, nays 29, as follows:

[Rollcall Vote No. 244 Leg.]

YEAS—65

Allard	Edwards	Lugar
Allen	Ensign	McCain
Barkley	Enzi	McConnell
Bayh	Feinstein	Miller
Bennett	Fitzgerald	Murkowski
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Breaux	Gramm	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Cantwell	Hatch	Smith (NH)
Carnahan	Hollings	Smith (OR)
Chafee	Hutchinson	Snowe
Cleland	Hutchison	Specter
Cochran	Inhofe	Stevens
Collins	Johnson	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Lieberman	Voinovich
DeWine	Lincoln	Warner
Domenici	Lott	

NAYS—29

Akaka	Dodd	Murray
Baucus	Dorgan	Nelson (FL)
Biden	Durbin	Reed
Boxer	Feingold	Reid
Byrd	Harkin	Rockefeller
Carper	Jeffords	Sarbanes
Clinton	Kohl	Schumer
Conrad	Leahy	Stabenow
Corzine	Levin	Wyden
Dayton	Mikulski	

NOT VOTING—6

Campbell	Inouye	Kerry
Helms	Kennedy	Torricelli

The PRESIDING OFFICER. On this vote, the yeas are 65, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The majority leader.

AMENDMENT NO. 4902

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Lieberman amendment No. 4902 be in order.

Mr. GRAMM. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The majority leader.

Mr. DASCHLE. Mr. President, I very regretfully make a point of order that amendment No. 4902 is not germane.

The PRESIDING OFFICER. The Chair sustains the point of order. The amendment falls.

AMENDMENT NO. 4911 TO AMENDMENT NO. 4901

Mr. DASCHLE. Mr. President, I call up amendment No. 4911.

Mr. BYRD. Mr. President, what is happening? What was the request? What has happened?

Mr. DASCHLE. Mr. President, I have called up amendment No. 4911. I would like it read.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. BYRD. Mr. President, parliamentary inquiry. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. BYRD. Mr. President, what was the request agreed to; what happened? What was the decision of the Senate?

The PRESIDING OFFICER. A unanimous consent request that the pending first-degree amendment be in order was objected to. Objection was heard. A point of order was then made against the amendment on the grounds that it was not germane. The Chair sustained

the point of order, and that amendment fell.

Mr. BYRD. I thank the Chair. There was so much noise in the Chamber that many of us could not hear what was going on.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LIEBERMAN, proposes an amendment numbered 4911 to amendment No. 4901.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide that certain provisions of the Act shall not take effect, and for other purposes)

At the end, add the following:

TITLE XVIII—NONEFFECTIVE PROVISIONS

SEC. 1801. NONEFFECTIVE PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (i) through (xiv).
(2) Section 311(i).
(3) Subtitle G of title VIII.
(4) Section 871.
(5) Section 890.
(6) Section 1707.
(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

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

The PRESIDING OFFICER. Is there a sufficient second?

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

Mr. DASCHLE. Mr. President, I retain the floor.

The PRESIDING OFFICER. Is there a sufficient second?

In the opinion of the Chair, there is not a sufficient second.

Mr. DASCHLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4953 TO AMENDMENT NO. 4911

Mr. DASCHLE. Mr. President, I call up amendment No. 4953.

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

Mr. DASCHLE. Mr. President, I hold the floor.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LIEBERMAN, proposes an amendment No. 4953 to amendment No. 4911.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Mr. NICKLES. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the reading of the amendment.

The legislative clerk continued the reading of the amendment, as follows:

Strike all after the first word and insert the following:

TITLE XVIII—NONEFFECTIVE PROVISIONS

SEC. 1801. NONEFFECTIVE PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (i) through (xiv).
(2) Section 311(i).
(3) Subtitle G of title VIII.
(4) Section 871.
(5) Section 890.
(6) Section 1707.
(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

(d) The amendment made by subsection (a)(1) of this section shall be effective one day after enactment.

Mr. NICKLES. Mr. President, 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.

Mr. REID. I ask unanimous consent that during the next 90 minutes—that is until 1:30 today—there be no action, other than debate, on the matter now before the Senate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Texas.

Mr. GRAMM. Mr. President, I do not want to give a lengthy speech, but briefly I will talk about where we are and then talk about the amendment that is pending. We have now invoked cloture on the pending substitute, and so we are in a very tightly scripted 30-hour period. The Democrat majority leader put into place two amendments, and in the process no amendment now is in order. This produces a situation where at some point, at the end of 30 hours, there will be a vote on the pending Lieberman amendment.

The pending Lieberman amendment is the amendment I will discuss. It is clear these amendments will not be dealt with until the 30 hours expires. So we will have one vote on the Lieberman amendment and then we will move to vote on final passage. I want to address the Lieberman amendment because what tends to happen in these cases, where things are done at the last minute, is that it is sort of easy to confuse people as to what has been done. I want people to understand where the provisions came from and why they are important. One can agree with them or disagree with them, but I want my colleagues to basically know where they came from.

Over the weekend, we had a series of negotiations. I want to go back to the point that the President could have said, after the election, that he had a mandate, that this Congress could go home, that we would then have a new Congress and he would write the homeland security bill the way he wanted it written, or he would have Congress write it that way. I think it tells us a lot about our President that he decided not to do that.

In fact, after having gotten a strong electoral mandate, the President actually negotiated further and made additional changes in his bill.

The substitute that is before us is basically the Gramm-Miller amendment, which is well-known, which we debated for 6 weeks—few amendments have ever been debated that long in my 18-year career in the Senate—with two sets of changes. One, the agreements that the President reached with three Democrat Senators and an Independent Senator in negotiations over the weekend, whereby the following changes were made: Workers in the Federal sector and unions that represent them were given a greater voice in expressing their views about how the new Department is organized, and they were given more clearly defined due process. They were not given veto power, but they were given a guaranteed input under a specific time period. That is the significant change that was made. That represents a compromise from the original Gramm-Miller amendment.

The second change that was made was recognized that the House had passed its own bill. So realizing that we were coming to the end of the Senate, one of the things we did over the weekend is we met with the House to try to make changes in our substitute to assure that at the end of the session we would not have to do a conference once we had passed the bill. Quite frankly, the Democrats who have been supportive of this effort felt strongly that they did not want to negotiate with us and then end up negotiating with other Republicans in conference. That makes sense. When a deal is cut, one wants it to be a deal. So we brought in the House. As a result, we took 95 percent of our provisions, took about 5 percent of the House provisions, and that now is the bill before us. This bill has been adopted by the House, which has now left town. They will be here in pro forma session on Monday, but practically the House has adjourned.

I will address the generic issue about add-on provisions and then I want to talk about something else. I hope nobody is offended by this, but I have to

say I have probably been as strong in speaking out against add-on provisions as anybody. I remind my colleagues that many times at midnight or 2 in the morning we have had seemingly noncontroversial amendments that did all kinds of special projects that we were going to accept. In fact, earlier this Congress I sat in that very room and went through a list of amendments. One amendment would have the Federal Government absorb a billion dollars of liability for a project in one State. Now that is pretty targeted. I am not going to mention the State, and it does not matter.

Any time we negotiate with the House, with 435 Members focused on a very small congressional district, they are going to put in provisions that relate to their district. That has been the nature of the body from the very beginning. It started with the first Congress. It will end with the last Congress. It will never go away.

For the people who say there are extraneous matters in this bill, of all the major bills I have looked at that have been agreed to by the House and Senate, there are probably fewer extraneous matters in this bill than any major bill I have looked at in a very long time. I would like go down the list of amendments being discussed and explain where they came from and why they make sense.

The first one has to do with vaccines. We had a provision in our bill related to vaccines and related to the production of items to be used in the war on terrorism. In every war we have ever fought we have had some form of indemnification for people who produce things used in that war. The provision we had in the Senate bill was a taxpayer indemnification. I did not like that provision, but I had Republican colleagues who were for it. We were trying to get 51 votes. So I took it.

The House had a far better procedure. That was a limit on liability. We did not take all the limits on liability they had in the compromise because we were afraid that might offend powerful special interest groups. But what we did in three of the six items mentioned is we simply applied the principle that has been applied to every war this Nation has ever fought: if you are producing a new vaccine or new weapon or new system for use in that effort, there are some liability limits involved. That is where the item of vaccines came from and where the item of airport screening came from and the item on manufacturers came from.

To suggest this is some special interest sweetheart deal makes good political rhetoric, but the bottom line is it is not true. Not only do the provisions fit, not only are they part of the fabric of the bill, but we had a provision to have the taxpayer pay for the liability risk, and we picked a better, preferable approach, which is to limit liability when we introduce new technology like airport screening and new vaccines. We always had some limit on vaccines because they are risky, but the threat is now serious. It has never been relevant to a war effort before because we have not viewed smallpox as being a weapon. We do now.

In three areas our colleagues have singled out as being special interests—vaccines, airport screening, and manufacturing of items used in the war on terrorism—those items were in the Senate substitute, but they were in it in the form where the taxpayer would have paid. We put in simple limits that make sense and that have been part of every war we ever fought of any significance in American history.

The next item viewed as being extraneous is a change made to the Wellstone amendment. Senator Wellstone introduced an amendment adopted by a voice vote because it was clear it would pass and nobody wanted to vote on it. It said if any company has ever been domiciled in America, throughout American history, and that company is now domiciled somewhere else, that company cannot bid on contracts related to the war on terrorism.

The change made in the amendment is a good government change. It is not an extraneous special interest provision. It is simply a provision that says the President, for national security reasons, has a right to waive this requirement. Why would he do it? First, there might be only one supplier. Second, there might be no competitor if it is not waived, in which case you could end up paying an exorbitant price. Finally, it might actually be better from America's point of view if the company has substantial production in America, even though its home office is somewhere else, for us to buy from that company for national security reasons, for job reasons, and for economic reasons. That provision is hardly an add-on provision. It is, in fact, a good government provision.

Now, let me discuss transportation security rules. We know the provisions and deadlines we mandated for air travel security are so strenuous they cannot be met. Occasionally, we get into these situations where we are debating some deadline and we know the deadline cannot be met and will not be met, no matter what we write into law. What this bill does in a careful and reasoned way is set out a new deadline for meeting them, a deadline that can be met and that is reasonable. Instead of creating a farce in law where we say something will be done by December 31—and we know very well it cannot and will not be done and, as a result, you get no pressure to do it on time—we set a realistic deadline.

Next we have these advisory committees. If there is anything more useless than an advisory committee, I don't know what it is. I am not saying advisory committees cannot be valuable. I am not saying there are not some that are valuable. But we use them so often they become irrelevant. The striking or not striking of these advisory committees has no import, no significance to this bill. If, however, by striking the committee we change the bill and end up killing homeland security because the House has adjourned, then it becomes very significant.

Those are five of the six items that have been listed. The final item is the designation that a university be involved in the process. It is one item where there is an earmark. Seldom do we see a major piece of legislation that we do not have several dozen earmarks.

We are down to a simple question, and I will conclude on this. This is hardly an unknown amendment. We have debated it for several weeks. I know there are strong feelings on the issue, but we had an election, and if anybody got a mandate out of that election on any issue, the President got a mandate: Pass homeland security.

The House passed a bill. They negotiated with us in good faith. Was everyone involved in the negotiations? No. But I didn't help write the Lieberman amendment, either, because it was his amendment. We have bipartisan effort. We have a majority vote. We are down, now, to where an amendment has been proposed that would strike six provisions. I believe if the amendment is adopted, it will jeopardize the bill. The House passed the bill, they have gone home, and they are only going to be back in pro forma session. Five of the six provisions represent important elements in the bill.

To suggest trying to protect and encourage the production and distribution of smallpox vaccine is a special interest favor to a drug company is taking politics beyond the realm of reason.

On airport screening and manufacturer protection, this liability protection is something we have done in every war we fought. This is either a war or it is not a war. Should we start to buy from foreign companies over companies that are producing products in America but the headquarters was here in 1804 and it is now in London? I think we take this Buy America stuff too far. We should buy the best product at the lowest possible price that conforms with our national security. But to give the power to waive it when our national security interest is involved is hardly unreasonable.

Changing the deadline on airport security—every Member of the Senate knows we are not going to meet the deadline. Why not change it?

Finally, advisory committees—who cares? You could strip all of them out and I wouldn't care. But by stripping them out you are risking killing the bill.

So, in the end, this amendment really comes down to a threat to the passage of homeland security. Five of the six provisions are totally defensible. The sixth one is important only if appropriations occur and we are going to pass the appropriations later, so we are not committing to anything.

Contrary to the criticism that there are extraneous materials in this bill, there are fewer extraneous matters in

this bill than any major bill I have seen in many years. When you reach an agreement between the two Houses, you are always going to have extraneous material.

So, we will have a vote at 5 o'clock on Monday. First of all, I think it is bad policy to strike these six provisions. I think no legitimate case can be made against four of them. I think one of them is irrelevant—whether we have advisory committees or not. I think the other one is a small item in a big bill and I do not think it is worth risking this bill to make that change. Nor do I believe this issue would ever have been raised, that this amendment would ever have been offered, had this not been an extraordinarily controversial bill to begin with.

So I just have to say, in the big picture, I feel totally comfortable in defending the great majority of these six provisions. I think we need them. On substantive grounds, we should limit liability for new vaccines that may save American lives; for airport screening equipment that may keep our children, our spouses, or ourselves from being killed on airplanes; and from new manufactured items and new weapons we need in the war on terrorism. Those items should not be stricken.

I know special interest groups like the plaintiffs' attorneys are opposed to these provisions. But they are limited, they are narrow, they are reasonable, and the alternative, which we had in the Senate amendment, was to have the taxpayer pay all these damages. So this seems preferable to me.

I urge my colleagues when we vote on Monday to vote against this amendment and, in the process, let us pass this bill in the form it passed the House and, to the maximum extent possible, guarantee that we are successful in seeing this bill become law.

I yield the floor.

The PRESIDING OFFICER (Mr. LEAHY). The senior Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that my name may be added as a cosponsor of the pending Daschle-Lieberman amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator's name is added as cosponsor.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, it is a very special moment on the floor of the Senate to hear my colleague from Texas defend special provisions being put in legislation—actually to hear him describe the negotiations at the end of the process that result in these special provisions. Because he has been a tireless opponent of provisions that are put in pieces of legislation that in most cases or many cases have nothing to do with the underlying bill. So it is a real treat today to hear my colleague from Texas justify and support and ask Members of the Senate to support these special provisions that were put in the homeland security bill which, in most cases, had nothing at all to do with homeland security.

I must say, with respect to the issues of childhood vaccines liability protection, manufacturer liability protection, transportation security—I would wonder whether these have had hearings. Because we so often hear our colleagues, especially my colleague from Texas, say: You know, someone has put a provision in the bill. There has been no hearing on the bill. I am wondering whether these provisions have had hearings and discussion, and if there were negotiations, as was represented earlier by my colleague, were the parents of autistic children part of the negotiations? Where were the negotiations? Was it late at night? Early in the morning? Was it at the White House, as Congressman ARMEY would have us believe? I don't know the answer to that. But my hope is our colleagues will vote to strip these provisions from the bill.

Homeland security, that is what this legislation is about. Frankly, the way this legislation has been created, it was not under normal circumstances, where you have committee exploration in some detail and some depth of all of these provisions. What has happened is at the eleventh hour a piece of legislation is written and it is placed on desks. It has a rubber band around it. It is four-hundred-and-some pages and I know of very few Members of the Senate who would have read all of it at this point.

But having heard my colleague from Texas, for whom I have great fondness, describe his support for special provisions, especially at the end of his career here in the Senate, I must say that this is a very unusual moment. We will, of course, miss him for a lot of reasons. Among other things, I will miss him because at the end of most bills, he will be the one counted on to stand up and say: I object to these special provisions.

But he seems to have hit a speed bump here at the end of the road, on special provisions. I hope my colleagues will decide they want to vote to strip these provisions out of this bill.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. DORGAN. I will, of course, yield.

Mr. BYRD. I will only be a moment. The distinguished Senator from North Dakota, Mr. DORGAN, has referred to the distinguished Senator from Texas, Mr. GRAMM. May I interpose this observation.

Diogenes went about the streets of Athens with a lantern, saying that he was looking—in broad daylight—he was looking for a man, he was seeking a man.

Plato, upon going to Syracuse, was asked by Hieron the—I wouldn't say he was a beneficent dictator. But he was asked why he came to Syracuse.

He said: I came seeking an honest man.

I rarely make the observation as a premise to what I am about to say—I believe the Senator from Texas is not only a man, but is also an honest man. He is very frank and open. He doesn't have to come to the floor with written speeches as I often do. He speaks from the heart and from the head and is very up front. He has always been that way. He explains his reasons. He doesn't hide his reasons. And he will answer your questions and he will answer honestly.

So I pay tribute to the Senator from Texas in that regard. I am glad the distinguished Senator from North Dakota has given me the platform for a moment to say that. We may not agree with the distinguished Senator from Texas. I certainly don't agree with the request for some of the special interest provisions here in this bill. But I do say here is an honest man, as far as I am concerned. He is aboveboard. He will answer your questions. He doesn't need a written speech to do it.

So I say I wish we had more PHIL GRAMMS in the Senate. Excuse me for taking this time. I will say no more, except to thank him for the good relations.

Mr. GRAMM. Will the Senator yield for just 30 seconds? It is said, in the old Confederate Army, that they didn't give medals.

So the single honor was to be mentioned in Robert E. Lee's communiques to Richmond.

Having the distinguished Senator from West Virginia say something about me and to pronounce me a honest man I take in the same way that any private in Hood's brigade would have taken in the mention of their name in one of those communiques.

I love the Senator from West Virginia, as he knows. I think he serves a great purpose in the Senate. In my opinion, he is not always right, but right is not always easy to find. I think it is the give and take that ultimately produces it. Senator Wellstone, in my opinion, was not always right, he did speak honestly and with clarity. And he knew where he was coming from, and you could be for it or against it. I do think that is important to the Senate.

I thank the Senator.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, the comment that not always right but never in doubt may well apply to every Senator. I must say to my colleague from Texas that I intend for a few moments on Monday to say a word about the Senator from Texas, and my colleagues from South Carolina and North Carolina, and others who are leaving the Senate. I don't know if Senator BYRD indicated that he wished there were more such as the Senator from Texas, and he is, indeed, an extraordinarily bright and talented Senator. There are times at midnight when he is objecting to all kinds of provisions that I suspect the Senator from West Virginia and a few others would not wish that we had 25 more exactly in the same mood at midnight on important pieces of legislation. But he and so

many others contribute in very significant ways to this body.

This body produces for the American people best when it achieves the best ideas that everyone has to offer. There are times when we end up with the worst rather than the best. I have always thought that politics and our political system is not who is the worst; it is who is the best, who has the best ideas, and who can best manifest those ideas in public debate to achieve a result for this country.

Regrettably, too much of American politics—especially if you are coming off recent campaigns—is not at all about who is the best but rather who is the worst. That, in my judgment, becomes an anvil on the body politic. John F. Kennedy used to say with some beautiful prose that mother kind of hopes her child might grow up to be President, as long as they don't have to become active in politics. But, of course, politics is the way we make decisions in America.

I am enormously proud of this political system of the participation by Republicans, Democrats, Conservatives, Liberals, Independents, and moderates. I think all bring a great deal to the public debate and discussion, and strengthen our country.

Having said that, on Monday I will say a few words about our colleagues who will be leaving us—Senator CLELAND, Senator CARNAHAN, and others who have been mentioned on the Republican side. I believe that it is a great privilege to serve with each and every one of them, even though we from time to time have our differences. It is a remarkable privilege to be here and to serve with them.

I wish to make a point about homeland security that is not a part of this bill but I think a part of something that is very important. To underscore how important it is, I would note that we have been told by the head of the CIA that the threat of attack by al-Qaida and other terrorists now is as high as it was the day before September 11.

On October 25 of this year, a task force headed by former Senators Warren Rudman and Gary Hart issued a report on America's homeland security. That report was entitled ''America Still Unprepared, America Still In Danger.'' It was a bipartisan task force sponsored by the Council on Foreign Relations, which included former Secretaries of State, Warren Christopher, George Shultz, ADM William Crow, Retired, former Chairman of the Joint Chiefs of Staff.

They found that 1 year after the September 11 attacks America remains dangerously unprepared for another terrorist attack.

I specifically wish to talk about one of their concerns raised in this report that I read, which gave me great personal concern.

In the report, the task force concluded that the 650,000 local and State law enforcement officials around the country ''continue to operate in a virtual intelligence vacuum without access to the terrorist watch list provided by the U.S. Department of State to Immigration and consular officials.''

Our government has a watchlist to identify foreign nationals suspected of ties to terrorist organizations. That watch list is at the State Department. It is provided to the Immigration Department and to consular officials. It sets out the names of people whom we ought to watch because they are known terrorists. They are people who associate with terrorists; they are a terrorist threat to this country.

Guess what. That watch list is unavailable to state and local law enforcement officials around this country.

Thirty-six hours before the September 11 attack, one of the hijackers was pulled over by a Maryland State police trooper for driving 90 miles an hour on Interstate 95. The hijacker's name was Ziad Jarrah. He was a 26-year-old Lebanese national. He was one of the key organizers of the al-Qaida terrorist cell formed in Germany 3 years ago. He shared an apartment with Mohammed Atta. And he was at the controls of flight 93 when it crashed in a rural area of Pennsylvania.

When that hijacker—or at that point the potential hijacker—was pulled over by the Maryland trooper, he was driving a car rented under his own name.

There are a couple of things with respect to this issue that are interesting.

No. 1, his name was not on the watch list.

No. 2, had it been on the watch list, it wouldn't have mattered because a highway patrolman or a city police officer has no access to that watch list. The officer can run the name of an individual through the NCIC computer and find out if that individual has an outstanding warrant, or if there are law enforcement warnings about him but the officer has no way of knowing if the individual is on the State Department terrorism watch list.

The State Department watch list has the names of 80,000 terrorists or suspected terrorists on it. And 2,000 names are being added each and every month. The watch list is drawn from a good many area intelligence agencies. And as we speak, there is no way for law enforcement authorities to access the database.

Let me read in detail an excerpt from the Hart-Rudman report:

> 'With just fifty-six field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the Federal Bureau of Investigation. This burden could and should be shared with 650,000 local, county, and state law enforcement officers, but they clearly cannot lend a hand in a counterterrorism information void. When it comes to combating terrorism, the police officers on the beat are effectively operating deaf, dumb, and blind. Terrorist watch lists provided by the U.S. Department of State to immigration and consular officials are still out of bounds for state and local police. In the interim period as information sharing issues get worked out, known terrorists will be free to move about to plan and execute their attack.'

This comes from the report of former Senators Hart and Rudman, entitled ''America Still Unprepared, America Still In Danger.''

I asked my staff—after I read this in the Report—to contact the task force. The task force, through my staff, has told me that they are not aware of any administration initiative to fix the problem. This, despite the fact that this is a top recommendation of a blue-ribbon task force.

So I asked the Congressional Research Service to contact the White House Office of Homeland Security, the Department of State, and the Department of Justice. They have done this in recent days.

My understanding is that after I made these inquiries the White House convened a meeting with State and Justice officials, and they are now apparently looking into ways to integrate the State Department terrorist watch list—called the ''Tipoff'' database—with the National Crime Information Center, which is accessible by State and local law enforcement authorities.

This effort must be expedited. Let me quote from the article in the Washington Post of just yesterday:

> U.S. intelligence officials, increasingly confident that al Qaeda leader Osama bin Laden is the speaker on a new audiotape released this week, said yesterday that the message was part of a disturbing pattern indicating that terrorist groups may be planning a new wave of attacks on Western targets.
>
> Even before the purported bin Laden tape surfaced on the al-Jazeera satellite network on Tuesday, the CIA, FBI and National Security Agency had detected a significant spike in intelligence ''chatter'' over the previous 10 days that strongly indicated new assaults are being planned, officials in U.S. intelligence agencies said.

That is from the Washington Post.

They continue to say:

> The amount of alarming information was approaching the volume seen in the weeks before the Sept. 11, 2001, attacks in Washington and New York, and again in the middle of last month following a wave of attacks on overseas targets, some sources said.

The point is this: Homeland security and homeland protection rests, yes, with our intelligence-gathering agencies, yes, with the FBI, the CIA, and all of the officials who are working very hard, spending a lot of hours doing the best job they can to make it work. But beyond that, it also rests with cooperation with all of the local responders, especially local law enforcement officials across this country. There are 650,000 of them.

If, today, a terrorist drives through a rural county in North Dakota this afternoon, or a rural county in Vermont, or Kentucky, or in the middle of New York City, and is picked up for a traffic violation, and is a known terrorist on a watch list—guess what—

that highway patrolman, that city police officer is going to run that terrorist's name through the database at the NCIC, and they are going to get no warning that what they have on their hands is a terrorist in the car in front of them. There would be no warning at all because they cannot access the watch list.

If we have a watch list in which we have identified the names of terrorists and suspected terrorists, it makes no sense at all to withhold that information from law enforcement officers, who every single day climb out of bed and go protect this country on America's streets, on our highways. They are our eyes and ears. They are also watching out for the security of this country. They ought to have access to that watch list.

Again, let me say, this was the No. 1 recommendation in the report offered by former Senator Rudman and former Senator Hart. The report, which I would urge everyone to read, is entitled: ''America Still Unprepared—America Still in Danger.'' These are former Secretaries of State, former Senators, Republicans, Democrats, evaluating what needs to be done to protect this country for this country's security.

I want to go back to read just a portion of the report. The task force had this to say:

> With just fifty-six field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the FBI. The burden could and should be shared with 650,000 local, county, and state law enforcement officers, but they clearly cannot lend a hand in a counterterrorism information void.

Yesterday, I was on the phone with a community in North Dakota, and the county sheriff was there in the room, and we talked by conference phone. We talked about this issue. He is not too far from the Canadian border. If one of his deputies or that county's sheriff stops a car on a rural highway, and it turns out to be a terrorist driving a rented car, he is not going to know because he does not have access to the watch list, he does not have access to the information. The FBI will not know, the CIA will not know, no one will know that terrorist was driving a car on that rural road because the person who apprehended him—the county sheriff, the city police officer—had no access to the information the State Department has, the consular officials have, the CIA has. It is not that the information does not exist, it is that it is not shared with local law enforcement officers across this country for the purpose of securing this country's homeland.

So this was the task force's top recommendation. This was not No. 5 or No. 10, it was the top recommendation of this group, a group that included several former Secretaries of State under Republican and Democratic administrations, Republican and Democratic former Senators, and others.

So I implore the President and the folks who are apparently now working on this to do everything they can in this regard. When a trooper stops someone for speeding tomorrow, or the day after tomorrow, or the day after that, and the individual that was pulled over is a terrorist, I want that trooper to realize who he has in that car—for the trooper's protection, and for the protection of this country.

Let me talk briefly about one other piece of homeland security, and we addressed part of it yesterday.

I have told my colleagues previously, I was recently at a port in Seattle. I don't know much about ports because I come from a landlocked State. I don't come from a State near an ocean. So I went down to see how the ports worked. They showed me all these ships that come in with all these containers.

I asked: What is in all these containers? They said: We have all these bills of lading and invoices, so we know what is in them. I asked: Can I see? And they showed me some containers they were opening.

They showed me a container from Poland that had frozen broccoli in it in 100-pound bags. They pulled out a bag of frozen broccoli and cut it open. Sure enough, it was frozen broccoli. I asked: What is in the middle of the container? I know what is in this bag. And they said: Well, we just know what's on the invoice.

We are spending $7 to $8 billion to see if we can stop an incoming missile because we are very afraid a terrorist group might get hold of an ICBM. But it is more likely a terrorist group might put a weapon of mass destruction in a container on a container ship that comes in at 3 miles an hour pulling up to a dock in New York City or Los Angeles.

We have 5.7 million containers every year coming into our ports. So 5.7 million containers every single year; 100,000 are inspected, 5.6 million are not. Is that a matter of homeland security? You bet your life it is.

A fellow in the Middle East—many of you read about this fellow—decided he was going to ship himself to Toronto and then come into this country. He had a GPS, a computer, a toilet, fresh water, a cot, all in a container loaded on a container ship, shipping himself to Toronto, Canada, with the intention, apparently, of coming into this country.

Do we need to be concerned about these things? You better believe it. And many of these issues, even if we passed a homeland security bill, will not be resolved.

The first issue I mentioned today is not resolved, and will not be resolved with the passage Monday of this bill: The fact that 650,000 local law enforcement authorities have no ability to access a watch list to determine who is a terrorist and who isn't. And 5.6 million uninspected containers coming into our ports will not be inspected next Tuesday when the homeland security bill is passed.

So my point is, there is much left to be done for those of us—and I am sure that is all of us—who care deeply about homeland security in this country.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York was on his feet. I know the Senator from Tennessee is waiting.

Mr. SCHUMER. If the Senator will yield, I was waiting behind the Senator from North Dakota, Mr. DORGAN. If we are going back and forth—I only want to speak for about 10 minutes.

Mr. FRIST. Mr. President, I sought recognition first.

The PRESIDING OFFICER. There is not a particular order. The custom is usually to go back and forth from side to side. I am wondering if we might recognize the Senator from Tennessee, to follow the normal custom.

Mr. FRIST. Normal procedure would be to turn to me?

The PRESIDING OFFICER. I am sorry. I heard the Senator from New York, but if the Senator from Tennessee says he sought recognition earlier, then I will apologize for not hearing him.

Mr. FRIST. Mr. President, I would be happy to yield, although I felt I was—

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee.

Mr. FRIST. Mr. President, I will yield 10 minutes to the Senator from New York. Is that enough time?

Mr. SCHUMER. I appreciate it. I don't want to break the protocol.

The PRESIDING OFFICER. I am prepared to recognize the Senator from Tennessee.

The Senator from New York.

Mr. SCHUMER. I thank the Senator from Tennessee.

The PRESIDING OFFICER. I thank both my colleagues for helping the Chair out of a difficult situation.

Mr. SCHUMER. Let us hope and pray that is the Chair's most difficult situation in the upcoming months.

I thank the Senator from Tennessee for allowing me to speak. I will try to be brief. I would like to talk about two related subjects in this bill: What is in the bill and what is not in the bill.

What is in the bill, aside from the original homeland security provisions which we have been debating for a very long time, are little pieces of legislation unrelated to homeland security, none of which could stand the scrutiny of individual debate. In other words, if any of these little provisions were put in separate legislation and brought to the floor of the Senate, my guess is they would be overwhelmingly defeated.

For those to be in homeland security right now, for those pieces of pork, for those rifleshot pieces of legislation that benefit one company to be in this bill, particularly after the President made such a fuss about keeping this bill the way he wanted it without any other provisions in it, is very wrong.

I hope we will support the Lieberman amendment. There are a few that are particularly galling to me. Probably the worst is a provision in this bill that was in the original bill that the House just took out that said, if you go overseas to avoid paying taxes, the original provision said, you can't bid on homeland security contracts. This takes it out. It says to companies that move overseas that they can benefit from the homeland security issues. I find that very troubling.

There is a provision that exempts one company, Eli Lilly, from any liability against a drug that is already subject to many lawsuits because of its mercury levels. That kind of provision would never pass standing on its own, and it was slipped in in the dark of night by the other body. We should not countenance it here.

There are provisions that redebate the tort law. We will have plenty of debates about tort law next year; I am sure of that. But to put them in this legislation with no debate would make the Founding Fathers gag.

We should stop doing these things, but particularly in a homeland security bill that was so subject, in the election, to a debate that the President wanted it his way or no way and led, at least if you believe some of the pundits, to some of our colleagues losing their elections because they wanted it a slightly different way. Now to put these sometimes pork, sometimes lard, sometimes extraneous provisions in this legislation is unfair, is wrong. We should support the Lieberman amendment.

I also would like to talk about what is not in the bill. This bill is a reorganization of agencies. All things being equal, it is better than not having it. But anyone who thinks, as my colleague from North Dakota has outlined, that this is going to make us safer, this is going to do the job, is sadly mistaken. I will support the legislation because it is a little bit better than the present situation. But I am worried that then we will think we have done all we can on homeland security.

This administration is letting our Nation down on domestic security—not by design but by effect—when they say that nothing can be added to homeland security that costs money. I don't get it. We are willing to spend $80 billion on a war in Iraq which I have supported, but we are not willing to spend $250 million to prevent nuclear weapons from being smuggled into our country. Where is the logic there?

Does anyone think that rearranging agencies is going to get the INS to have better computers or the Coast Guard to better defend our borders? No. And this administration is going to run up against a serious problem if it continues to have the view that we cannot spend a nickel on domestic security. The analogy, the comparison is stark. The military gets all the money it needs—it should—but our domestic agencies, both Federal and State and local, that deal with homeland security get virtually no dollars at all.

I was told that my provision, which had bipartisan support—Senator LIEBERMAN, Senator THOMPSON, Senator MCCAIN, Senator HOLLINGS—that would have enabled us to have nuclear detection devices attached to the cranes that load and unload containers and could detect a nuclear weapon that would be smuggled in, had to be out of the bill because it cost money. I find that to be sad. I find that to be troubling in the sense that we are letting our national guard down. If we were under such spending constraints when it came to the rest of the parts of the war on terrorism, I would say OK. But I don't understand why we can spend all the money we want overseas but when we come to the water's edge, even carefully thought out small amounts of money are not allowed.

This bill is problematic for what was just added in and what was not put in. It is a little bit better than nothing. It is a baby step in the direction of better homeland security because our agencies do have to be reorganized. But I hope and pray that not only we take out the extraneous provisions that should be debated another day, but that we don't make the mistake that this reorganization bill is doing what we need for homeland security.

With that, I yield the remainder of my time and once again thank my colleague from Tennessee for his graciousness in allowing me to speak. I will now exit for the shuttle to New York.

The PRESIDING OFFICER. The distinguished Senator from Tennessee is recognized.

Mr. FRIST. Mr. President, I rise to speak in opposition to the Lieberman amendment and will spend a little bit of time over the next probably 30 minutes going to the substance of what this amendment does, talking policy, but also talking to the impact that passing the Lieberman amendment would have on our homeland security.

The bottom line is that I believe striking the provisions, which is what the Lieberman amendment does—it pulls out certain provisions from the underlying bill—will put the people of our Nation at greater risk, when we are talking about homeland security and safety and protection of individuals, of families, of children. That is a broad statement. It is a bold statement for me to make. But over the next several minutes I want to give you the substance of it.

A lot of people have said these provisions having to do with vaccines and smallpox are one-company provisions. The second argument is that in some way these provisions cut off the rights of individuals to go to court. We have heard statements by the proponents that one agent, one preservative, causes autism and thus in some way the underlying bill will hurt families with children with autism.

As a scientist, as a physician, as someone who is very familiar with the provisions that were placed in the homeland security bill, I have a certain obligation to walk my colleagues and the American people who are listening through what the Lieberman provision would do by stripping out the smallpox provisions, by stripping out the vaccine provisions.

Let me begin by saying we are a nation at risk. We are at risk from nuclear weapons and from chemical weapons; we know. But when it really comes to what could potentially happen to our homeland—remember this is homeland defense that we are talking about—I would argue that the greatest risk for a weapon of mass destruction to be microorganisms, to be anthrax, which terrorized the Nation, when we don't even think, we don't know, we don't think it was used by a State, or the introduction of smallpox, which we know is a weapon of mass destruction, if introduced into a population that is unprepared, that has not been vaccinated. Vaccine is the front line for people at risk from anthrax. It is the front line for people at risk from smallpox. That means your children. That means your spouse. That means your grandparents. That means your family.

So we must not do anything and the LIEBERMAN amendment would do this—to increase the barrier for you to be protected.

Iraq has been mentioned. Most of my colleagues know that Iraq had one of the most robust biological weapons programs in the history of the world. It loaded anthrax, it loaded botulism toxin on missiles during the gulf war, inserted it into the warheads of these missiles. We don't know about smallpox. We didn't know that refrigerators had been found in Iraq that said ''smallpox'' across them, but we do know this robust biological weapons program is the foundation for a program of weapons of mass destruction.

The interesting thing about these microorganisms, these viruses, these bacteria, is that you don't have to have a big ship out there to send in a missile. We know that once you put smallpox in a society, it will travel through our schools, it will travel through our businesses and through our homes, and the only defense we have—the only defense, in terms of a medical treatment, is that vaccine. That is why, when we talk vaccines and when we talk smallpox, it is incumbent upon us to have those provisions in this bill.

I will begin with smallpox because it is the one that, a week from now, can be a problem. What about right now, or tomorrow morning, if we hear of three or four smallpox cases in the country? What actually happens at that standpoint? Smallpox is a disease that is one of the most deadly infectious diseases. There is a 30-percent chance, to anybody who gets it, that they are going to die. If three people are here, one of those three will die if they get smallpox.

What is the treatment? The only treatment—real treatment—is to get

that vaccine on your arm within 3 days. Some people say 4 days. I personally think it is 3. Some say 5 to 10, but if your child has smallpox, not from when the manifestations start appearing but from the time of actual contact, and that entails having a vaccine out there—say 300 million doses, because we know smallpox in an unprotected population, which we are, knows no barriers. Right now, if I had smallpox lesions within my mouth, people around these four or five desks probably would already be infected. The only protection is the vaccine itself. The only treatment for smallpox—and this isn't true with all biological agents, but the only treatment is the vaccine within 3 days.

The administration has a policy, that I agree with, that basically is, if there is an outbreak, or a case, you can inoculate people in that area. That is a great policy. We don't need to mass-vaccinate everybody. What about right now?

People listening, saying we are a nation at risk—Iraq has had biological weapons programs. We know Saddam Hussein is a mass killer, a serial killer, who kills his own people and other people. He hates the United States. We know the most powerful weapon of mass destruction is smallpox, and we know there is a refrigerator sitting there that has ''smallpox'' written on it.

What if I wanted to get the vaccine now, just in case? Right now, you cannot get it. I argue that you should be able to get it. But that is not yet the policy of the United States. I think with informed consent, knowing the side effects and knowing what the advantages could be—lifesaving—weighing the relative risk—what about if a case breaks out in the Northwest, say Oregon, tomorrow? If you wanted to get the vaccine and you live in Nashville, TN, you could not get it. We ought to change that. That is not what we are talking about today, but you see that vaccines are a front line for homeland security.

I don't know what is going to happen in Iraq; none of us knows. If we come back and deal with this 6 months from now, or a year from now, or 2 years from now, we are inadequately protecting the American people. I don't want to overstate it, but that is my belief.

If smallpox hits here, right now, we are inadequately protected. The Lieberman legislation would strip out a provision, within 2 days or 3 days or 4 days, that would make us more adequately protected as a nation.

The threat of liability—this is where the other vaccine provisions are important—should not become a barrier to the protection of the American people. I will repeat that. The threat of liability should not become a barrier to the protection of the American people.

Then you go back to the question, What is this threat of liability? I will boil it down and use smallpox as an example. Smallpox can hit here tomorrow or in 30 days or in 60 days from now or in 90 days or maybe never. We all pray it never hits. We have 300 million doses of vaccine. It is not all licensed yet, but it is good vaccine and I have utmost confidence in it. It is a risky vaccine. The childhood vaccines we use, which we are inoculated with—even the anthrax vaccine that potentially has certain side effects—if you look at these, I put smallpox among the most risky because we know the side effects are that about 1 in a million people would die. If you vaccinated 300 million people, about 300 would die. Ten times that number would have serious side effects—maybe encephalitis or many others that are life threatening. As a matter of fact, probably 30, 40 times that many would have a bad rash, many of which would cause hospitalization. So it is a vaccine, in medical terms, with more potential side effects than others.

What would you say if there were an outbreak tomorrow? You would call in nurses and public health officials, and pediatricians and other doctors, and you would say, as part of the American response to bioterrorism and the use of bioterrorist agents or microorganisms as weapons of mass destruction, you need to get this vaccine to as many people as you can within 3 days. It could be maybe 100 or maybe 1,000, or 10,000; and in a city such as New York, it could be a million easily within 3 days. Okay, you have the vaccine. You have willing health care providers. I think of myself as a physician. Everybody could be mobilized to do that. You are basically saying, as American policy: You need to give that vaccine. It has side effects, but we are not going to protect you in the event there is a side effect—death or encephalitis. We are not going to protect you in any shape or form, although you are fulfilling the mandate and the policy, the emergency response of the American people.

Why would they not do that? Because of the lack of protection from skyrocketing lawsuits. I have a great fear—and I don't want to say I know for sure, but I have a fear in talking to health care providers and to the nurses who recognize, given that vaccine is important to life saving, but at the same time is subjected to these unlimited lawsuits with punitive damages—they just might say: I cannot subject myself to giving a thousand of those doses, even looking at the statistics. That is the problem, that is why the smallpox provision has to be in there.

We have had so many people make all these statements, but nobody has been to the substance. The bill extends the Federal Tort Claims Act—the FTCA—protection to any person, such as a doctor, or a pediatrician, or a nurse, or somebody who is qualified to be giving that inoculation, lifesaving inoculation, in your arm. It provides them a protection of the Federal Tort Claims Act.

What is important there—people say if that is the case, you cannot sue. Well, that is simply not true. It basically says that the Federal Government is going to be on your side and will defend you in any lawsuit and the Federal Government will pay the damages. It does not deny adequate, just, fair compensation if there is a side effect, but what it does do is you are going to have somebody behind you; namely, the Federal Government, to pay you damages. It does say you go to Federal court. People say Federal courts cannot do this. In truth, we all know Federal courts can do that.

It is important to point out that in Federal court, the rules that are actually used are going to be applicable to that State or according to State law.

Thus, you can still sue, but the Federal Government pays. A lot of people say you should be able to punish anybody—punish that nurse who put that vaccine in your arm—so let's have punitive damages on top of compensation. The underlying bill says you get adequate, just, fair compensation. You are defended by the Federal Government and they will pay you, but there is no punitive damages component, which makes sense because, remember, that nurse is putting that inoculation on your arm to save your life under a plan put forward by our Government, probably in response to an emergency.

Over time, I think we need much more balance in terms of the overall provisions. It was not my idea, although I support these provisions strongly, to take these specific provisions out and to put them into the bill. So over time, we need to develop a more comprehensive policy to make sure we have both a full range of vaccines developed, that we have appropriate countermeasures, and if somebody is harmed by a vaccine, there is fair compensation.

We need to come back and visit this in a more comprehensive way as we go forward. I will add, though, there is some sense of urgency to this given the threats today.

The issue of what is front line is important because the use of germs, microorganisms, and bacteria is new to the American people as weapons of mass destruction. It is causing us to say we understand nuclear weapons, gas, but what about these organisms that can wind their way through a society? What is the front line?

That is why vaccines are absolutely important because they become the front line, and that is why we address vaccines in the homeland security bill, especially since we are at risk today. One cannot turn on a television or read a newspaper without learning of this enhanced risk, this higher risk.

Let me back out of this broader issue of vaccine. Smallpox is one case. It happens to be a virus. What about the plague which wiped out a third of Europe? What about anthrax? We have an old vaccine. The vaccine has to be administered over and over, so we need newer vaccine developed for anthrax.

What about Ebola? About 3 months ago, the National Institutes of Health said in their response to bioterrorism that one of its major priorities is going to be the development of a vaccine for the Ebola virus. That makes sense because we know that other states in their offensive biological weapons programs—and there are 12 offensive biological weapons programs outside the United States; people need to know that—there has been a linkage of smallpox with the Ebola virus. We know Ebola has a 90-percent mortality rate; smallpox has a 30-percent mortality rate. We should at least be thinking of a front line there which means a new vaccine. NIH said 4 months ago—and most people do not even know it—has as one of their major initiatives development of an Ebola vaccine. Why? Because intelligence tell us people have attempted to link viruses. Thus, we need to have an effective response system in terms of the development of vaccine.

Research is good. NIH is doing research. But unless we have manufacturers in the field manufacturing vaccines, we can have the greatest research in the world and know how to do it, but unless we can produce it and produce it quickly, the know-how does not do us any good because we are not going to be able to develop the vaccine to put on your arm and protect you from the Ebola virus.

There are provisions in this bill that provide smallpox as a microcosm, but in the macro sense, there are other vaccines. Every year—and the distinguished Presiding Officer knows this—we hear about these shortages of vaccines about every 6 months. People ask: Why are there these shortages? It is multifactorial, and we have to address that.

One of the issues we know is this unlimited liability. Think back to the smallpox vaccine. It is put on your arm, and you have a bad side effect. Somebody is going to sue for that side effect. There are no protections today. In the same sense, the manufacturers, the pharmaceutical companies, which is very popular for people to beat upon aggressively these days, the manufacturing companies, the pharmaceutical companies are the only ones that can make the smallpox vaccine, the front line for that weapon of mass destruction, for the Ebola virus.

We can, through NIH, promote the research, but only a manufacturing firm, a pharmaceutical firm can make the Ebola vaccine. There used to be in the eighties 12 pharmaceutical companies making vaccines. Then it dwindled to 10, then to 8, then to 7, then to 6, then to 5, and there are now only 4 vaccine manufacturers licensed to sell vaccines in the United States, and only two of these are American companies.

Why is that the case? Why would they stand out totally exposed for making a medicine that is lifesaving, yes, but one that with one lawsuit can wipe out their whole development process, their whole manufacturing process today?

That is an issue that has to be developed, and the urgency of it is the fact we are a nation at risk from biological agents, and there are 12 states that have offensive biological weapons programs, and we are today unprotected.

On the liability issue, people have said one preservative causes autism. They mentioned this on the floor. That is just wrong. The Institute of Medicine has made it very clear that there is no established causal relationship between that preservative and autism. I will and others need to go back and look at the data, but the Institute of Medicine has basically said that to date. We need more research.

I was one of the primary authors of the autism research bill. We need to look at it again. I want to assure families in the country that those statements made on the floor of the Senate are wrong. There is nothing in the underlying bill that slows down research for autism or just compensation, if there is an association between autism and a certain preservative.

It is interesting, with these vaccines being sort of inherently risky, with the risk of liability costs driven up so high because it is easy—it is not easy, but we can have lawyers coming in and starting these lawsuits.

In the 1980s, this body started the Vaccine Injury Compensation Program. They did this through the National Children's Vaccine Injury Act. It was passed in 1986, I believe. The whole purpose of this program is to provide injured patients compensation while attempting to control litigation, based on the recognition that vaccines will always be an easy target because they have inherent side effects and everybody gets vaccines—everybody in this body has been vaccinated. Everybody listening hopefully has been vaccinated. We all depend on those vaccines. That at the end of the day, since everybody gets it and there are certain side effects, that if you want to make a lot of money you can go out and start getting these people and start creating these lawsuits. That is why in the mid-1980s we said we have to put all of this together and look at it in a reasoned way, a way that is efficient, a way that is fair to people broadly. The vaccine injury compensation program is essentially a no-fault alternative to the traditional tort system in this whole area of vaccines. It has been a key component of stabilizing the vaccine market, of not driving even those last four companies—or the last two in this country—out of making vaccines. It has a streamlined process. It puts down a less adversarial alternative so not everybody is going to court and spending weeks, months, and in some cases years trying to have their cases actually looked at.

It encourages research and development of new and safer vaccines, and it provides the appropriate liability protection to that nurse who is putting that inoculation, that vaccine, in your arm, as well as the health care providers, the facilities, and the manufacturers.

What is in the underlying bill is a narrow set of provisions that were actually taken from a bill that I have studied for the last 3 years and that I introduced this Congress, that should eventually be passed in this comprehensive form, but the provisions have been taken out and included in the underlying bill I feel strongly about and I will continue to talk to my colleagues about them individually as they understand why those provisions were included.

I will say that the provisions that are in the bill are far narrower than what I think we actually need to do to have this balance in our liability system so we can continue to develop vaccines to protect our children, the current generation. In the event there is a bioterror attack a week from now, a month from now, a year from now, we will be adequately prepared.

The Lieberman proposal would strike these sections that are in the underlying bill. And all of them merely restate to some extent what was intended by Congress. This is a clarification, a restatement. In 1986, when it passed the bill, the underlying bill called the National Children's Vaccine Injury Act, what that act did was to create an administrative mechanism by which those children who have a serious side effect from a vaccine can receive compensation without ever having to prove in court a vaccine caused their particular injury. So you do not have to go to court. You can go to this new administrative body.

There are a handful of people who do not believe in vaccines. They just say all vaccines are bad. Most know that they are invaluable and have spared our children from many of the diseases that haunt us. Thus, when you have that which we all really fully understand today, that they are a protection for our children, plus this new threat of bioterror, that is why you link it to homeland security and that is why it is important in this bill. We know we must preserve that manufacturing base so with the research that is done, yes, by the pharmaceutical companies, but also maybe even more importantly by the NIH, we can actually manufacture those vaccines.

Section 171 clarifies that the components and ingredients of a vaccine listed in the vaccine's product license application and label are not contaminants or adulterants. Importantly, the advisory committee, from which all of this essentially was taken, is an advisory committee called the Advisory Commission on Childhood Vaccines. They unanimously concur with this particular provision.

The next section, section 1716, adds a definition of ''vaccine'' to the Public Health Service Act since that term was not defined at all in the initial legislation back in 1986. This section states

the obvious—that the term ''vaccine'' includes all components and ingredients listed in the vaccine's product license application and product label. Again, the Advisory Commission on Childhood Vaccines recommended the appropriate modification which is a part of the underlying homeland security bill, again, which the Lieberman amendment would strip out.

Sections 1715 and 1716 restate the original intent of the law that a vaccine is all the ingredients and components in the product which are approved by the FDA. This is an important one because there have been some allegations that all this was stuck in for a single company. The fact is that there are presently more than 150 of these lawsuits against the four vaccine manufacturers, as well as pediatricians, children's hospitals, state health departments and other healthcare providers. From my comments, one can see that it is not a single company. We are talking about a huge issue that reflects back to the protection of our families and our Nation.

Section 1714 clarifies that the term ''manufacturer,'' under the VICP, includes any corporation, organization, or institution that manufactures, imports, processes or distributes any vaccine on the vaccine injury table, including any component or ingredient of such vaccine. The Advisory Commission on Childhood Vaccines, again, an independent body making specific recommendations—it is composed, by the way, of trial lawyers, medical providers, and injured parties—unanimously supported this provision. This provision restates Congressional intent to ensure that any lawsuit alleging vaccine-related injury or death follow the same process and groundrules regardless of whether it is against the final manufacturer, a physician or hospital, or a component or ingredient manufacturer and addresses those lawsuits seeking to circumvent the Vaccine Injury Compensation Program.

I also want to point out that these provisions are supported by the American Academy of Pediatrics, and I will talk more about that in a minute.

I want to run through a couple of other specific ones, again because nobody has really talked to the substance underlying what this amendment would mean.

The congressional intent very much was to encompass the manufacturers of component materials of vaccines in the definition of ''vaccine manufacturer,'' and these provisions—what they do is clarify this intent. They restate the congressional intent as part of the Vaccine Injury Compensation Act. The courts are presently correctly ruling that these amendments—what they are doing is part of that congressional intent. The courts have correctly rejected the contention that a component or ingredient of an FDA-approved vaccine can also be considered substitute an adulterant or contaminant.

Among these decisions, the court charged with adjudicating the vaccine injury compensation program recently concluded that the language and legislative history of the National Children's Vaccine Injury Act demonstrated that claims relating to components of covered vaccines are plainly subject to the act. As to the misconceptions that have been presented on the floor, No. 1, these provisions do not prevent patients from suing in court. The statement has been made that it takes away rights. It does not. It does not prevent patients from suing in court. Instead it merely requires, as is required under current law, claimants must first go through the compensation program designed in the 1980s which has worked effectively but does need to be modified, as is being carried out in these provisions. They maintain their right to pursue a court case.

One can go through that program itself, the administrative program, in a timely way. If someone does not agree with the compensation that they put forward, they can go to court. I will say that without this clarification, litigation outside the program—and that is what is happening today—will continue and the supply of vaccines could well be jeopardized as we have these huge lawsuits.

One lawsuit today is $30 billion. That is what they are looking for in one lawsuit, $30 billion. The whole vaccine industry is only $5 billion. There are about 150 of these lawsuits out there today. Those who desire to bring litigation outside the compensation program will continue to sue the manufacturers of components of vaccines and ultimately that is going to result in the manufacturers of the products themselves simply walking away and not making vaccines and getting out of the vaccine business. Then who is going to make the vaccine for the Ebola virus, which our Federal Government, through intelligence, has identified as one of the six agents of which we are at risk, one of the six agents against which other nations have had offensive biological weapons programs.

If litigation continues against component manufacturers outside of the vaccine injury compensation program, those companies that make the components simply are going to be unnecessary to provide the vaccine or those people who make FDA-approved components and give them to the vaccine manufacturers will stop making those components. We saw that in the mid-1990s when raw material suppliers refused to sell the necessary components to the medical device manufacturers. People just stopped making materials there because of this fear of litigation. Ultimately there it took an act of Congress to protect those component manufacturers, the people making the pieces that go, for example, into a pacemaker or, in this case, it would be a component of the vaccine. It took an act of Congress to prevent a shortage back then of pacemakers and of other vital medical devices.

These provisions that are in the underlying bill have been unanimously supported by the Advisory Commission on Childhood Vaccines. As I mentioned, that includes injured patients, trial lawyers, and an expert group of patients as well. They have been endorsed by the American Academy of Pediatrics.

I ask unanimous consent to have a portion of letters from the Advisory Commission on Childhood Vaccines and the American Academy of Pediatrics printed in the RECORD.

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

ADVISORY COMMISSION
ON CHILDHOOD, VACCINES,
Alexandria, VA, June 19, 2002.

Hon. TOMMY G. THOMPSON,
Secretary of Health and Human Services, Washington, DC

DEAR SECRETARY THOMPSON: The Advisory Commission on Childhood Vaccines (ACCV) is authorized under Section 2119 of the Public Health Service Act to advise the Secretary of Health and Human Services (the Secretary) on the implementation of the National Vaccine Injury Compensation Program (VICP). At the June 6 meeting, the ACCV discussed in detail the need for urgent modifications of the VICP and the necessity to ensure the viability of the Vaccine Safety Datalink Project. Actions are needed to address a variety of concerns that directly impact the VICP.

BACKGROUND

As of May 2002, more than 50 individual and class action lawsuits with millions of plaintiffs alleging potential thimerosal-related injuries from childhood vaccines have been filed in state and federal courts. The plaintiffs in these lawsuits argue that their claims are not governed by the VICP because they allege that thimerosal is an ''adulterant'' to, and not a part of the vaccines. *These claims have been filed against vaccine companies and, in some instances, against health care providers. Thimerosal, as you know, is approved for use by the Food and Drug Administration and is part of the vaccine formulation when licensed; hence clarification is needed to direct these claims to the VICP before tort remedies can be pursued.*

Concurrently, some 500 incomplete cases have been filed as placeholders with the VICP alleging that thimerosal (mercury) has caused vaccine-related injuries. The medical records that the Act requires upon filing do not accompany many VICP petitions, including these cases. This causes problems because of the time constraints spelled out in the Act. The presiding special master must generally resolve a case within 240 days (this period excludes any period of suspension and any period during which a petition is being remanded). If the special master fails to issue a decision within such time, the petitioner may withdraw from the VICP and pursue outside litigation without affording respondent or the special master any meaningful opportunity to evaluate the VICP claim.

THE ACCV BELIEVES THIS DISTURBING NEW MEND IN CIVIL LITIGATION COULD CIRCUMVENT THE ACT

We submit the following recommendation for action:

RECOMMENDATION ON CERTIFICATION OF COMPLETENESS OF PETITIONS

The ACCV recommends that the Secretary propose legislation to amend the National Childhood Vaccine Injury Act of 1986, as amended, to require special masters to issue

a certificate of completeness once a determination is made that a petition is complete in accordance with section 2111. The time period described in sections 2112(g) and 2121(b) of the Public Health Service Act would begin from the date the special master issues a certification of completeness. This would allow for a period of 240 days excluding any period of suspension of any time the petition is on remand) for the parties to consider all of the evidence and for a decision to be reached. If the special master fails to issue a decision within this time period, calculated from the date the certificate of completeness is issued, the petitioner could withdraw from the VICP and pursue outside litigation.

SENATOR FRIST'S BILL

In addition to the previous request, we also ask that you consider our recommendations regarding legislation introduced by Sen. William Frist (R–IN), ''Improved Vaccine Affordability and Availability Act'' (S. 2053). The ACCV concentrated on Title II of the bill that has provisions to ensure that all claims for a vaccine-related injury or death are first filed with the VICP. The ACCV makes the following recommendations:

RECOMMENDATIONS ON THE ''IMPROVED VACCINE AFFORDABILITY AND AVAILABILITY ACT''

The ACCV unanimously concurs with the following sections of S. 2053 which are the same as or very similar to proposals made in the ''Vaccine Injury Compensation Program Amendments of 1999'' (the 1999 Amendments), which were developed from recommendations made by the ACCV and sent to Congress as legislative proposals by the former Secretary:

Section 206, ''Clarification of When Injury is Caused by Factor Unrelated to Administration of Vaccine'';

Section 208, ''Basis for Calculating Projected Lost Earnings'';

Section 209, ''Allowing Compensation for Family Counseling Expenses and Expenses of Establishing Guardianship'';

Section 211, ''Procedure for Paying Attorneys' Fees'';

Section 212, ''Extension of Statute of Limitations'';

Section 213, Advisory Commission on Childhood Vaccines''; and

Section 218, ''Conforming Amendment to Trust Fund Provision.''

The ACCV unanimously concurs with the following sections of S. 2053:

Section 204, ''Jurisdiction to Dismiss Actions Improperly Bought'';

Section 215, ''Clarification of Definition of Manufacturer'';

Section 216, ''Clarification of Definition of Vaccine-Related Injury or Death'';

Section 217, Clarification of Definition of Vaccine''; and

Section 220, ''Pending Actions''.

The ACCV does not concur with the following sections of S. 2053 and recomends:

Replacing Section 201, ''Administrative Revision of Vaccine Injury Table'', which changes the public comment period from 180 to 90 days with Section 2, ''Administrative Revision of Vaccine Injury Table'', of the 1999 Amendments which changes the public comment period from 180 to 60 days and shortens from 90 to 60 days the period that the ACCV has to review a proposed rule;

Modifying Section 202, ''Equitable Relief'', and Section 214, ''Clarification of Standards of Responsibility'' to add ''past or in front of present physical injury''. Some individuals may have sustained a vaccine-related injury in the past, but do not have a present physical injury. These individuals should not be prohibited from obtained relief in a civil action filed against a vaccine manufacturer or administrator;

Replacing Section 207, ''Increase in Award in the Case of a Vaccine-Related Death and for Pain and Suffering'' with the 2001 ACCV recommendation to increase the $250,000 benefit caps for both death and pain and suffering. These $250,000 benefit caps should be retroactively increased since 1988, and increased annually, thereafter, to account for inflation using the Consumer Price Index for All Urban Workers (CPI–U) as envisioned by Congress in the original National Childhood Vaccine Injury Act of 1986;

Replacing Section 210, ''Allowing Payment of Interim Costs'' which does not stipulate a timeframe for when the interim payment is to be made with Section 6, ''Allowing Payment of Interim Costs of the 1999 Amendments, which states that the interim payment can only be made after a determination has been made concerning whether or not the petitioner is entitled to compensation;

Modifying Section 219, ''Ongoing Review of Childhood Vaccine Data'' by deleting the phrase, ''together with recommendation for changes in the Vaccine Injury Table''; and

Replacing Section 221, ''Report'', which this language, ''The ACCV shall provide the Secretary of Health and Human Services with annual status reports on the Vaccine Injury Compensation Trust Fund (the Trust Fund), including recommendations on the allocation of funds from the Trust Fund.''

With regard to Section 203, ''Parent Petitions for Compensation'', the ACCV believes that the language in this section must be modified. The issue of compensating parents and third parties was raised when the original Act was drafted, but the focus remained on the need for an adequate compensation package that would cover the life of the injured child. Over the years, a few parent or third party petitions for compensation have been filed in state and federal courts. However, many of the class action suits contain parent petition, which prompted ACCV to revisit the issue. ACCV strongly believes that parent or third party petitions for compensation are more appropriately managed and adjudicated through the VICP rather than through outside litigation. Because of our concern for the well being of the child, the ACCV recommends that the award to the vaccine-injured child be separate from any award offered to the parent. At your request, the ACCV will develop options for such an award. In addition, this Section, as is currently drafted, raises serious constitutional concerns. The ACCV recognizes that the proposed provision, as drafted, may need to be supplemented to: (1) address potential constitutional concerns; and (2) assure that such parents or third parties claims may be properly administered by the VICP. Moreover, the ACCV believes that further consideration should be given to review of whether a third party's claim should be tied to the injured party's claim in civil actions.

Section 205, ''Application'', is a conforming charge to Section 203, and therefore, the ACCV does not concur with this Section until the language in Section 203 is sufficiently modified.

BACKGROUND ON THE VACCINE SAFETY DATALINK PROJECT

In order to enhance the understanding of rare adverse effects of vaccines, CDC developed the Vaccine Safety Datalink (VSD) project in 1990. This project is a collaborative effort, which utilizes the databases of eight large health maintenance organizations (HMOs). The database contains comprehensive medical and immunization histories of approximately 7.5 million children and adults. The VSD enables vaccine safety research studies comparing prevalence of health problems between unvaccinated and vaccinated people. Over the past decade, the VSD has been used to answer many vaccine-related questions, and has been used to support policy changes that have reduced adverse effects from vaccines.

Rep. Dan Burton, (R–IN), Chairman of the Committee on Government Reform, requested any and all records collected under the VSD and was prepared to subpoena the records if he was not given access. The CDC and HMOs, understandably, do not want to give this data to Rep. Burton because these records include confidential patient information. For now, Rep. Burton agreed to a compromise with CDC which would allow an independent researcher to replicate or conduct a modified analysis of a previous VSD study, while maintaining the confidential nature of the data, but Rep. Burton has not rescinded his threat of the subpoena. Therefore, the ACCV makes the following recommendation:

RECOMMENDATION ON THE VACCINE SAFETY DATALINK PROJECT

The Vaccine Safety Datalink Project (VSD) is a critical component of our vaccine safety infrastructure. Participation by health maintenance organizations in the VSD is predicated on confidentiality of patient identifiers. In order to assure the continued viability of the VSD, the privacy of individual patient data must be protected. Therefore, the ACCV recommends that the Secretary of Health and Human Services take all steps necessary to protect the privacy of patient data in order to ensure the continued support and viability of this important project.

In conclusion, Mr. Secretary, we believe that the VICP plays a critical role in our nation's childhood immunization program, and we urge your immediate attention to our concerns. The ACCV greatly appreciates your continued support, and looks forward to your timely reply.

Sincerely,

ELIZABETH J. NOYES,
Chair, ACCV.

Mr. FRIST. In part it says:

These claims have been filed against vaccine companies and, in some instances, against health care providers. Thimerosal, as you know, is approved for use by the Food and Drug Administration and is part of the vaccine formulation when licensed; hence clarification is needed to direct these claims to the VICP before tort remedies can be pursued.

That is what the underlying bill does. That is what the Lieberman amendment strips out.

The American Academy of Pediatrics also wrote in support of this. I'll quote a final sentence from this letter of June 19, 2002:

The AAP has reviewed S. 2053 and has the following comments beginning first and foremost with our strong support that all claims for vaccine-related injury or death first must be filed with the VICP.

In addition, we concur with the ACCV's most recent recommendations in support of sections 204, 215, 216, 217 and 220.

I ask unanimous consent to print the letter in the RECORD.

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

AMERICAN ACADEMY OF PEDIATRICS,
Washington, DC, July 19, 2002.

Hon. BILL FRIST,
U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: The American Academy of Pediatrics (AAP), and the 57,000 pediatricians we represent, greatly appreciates your leadership and support of the various

immunization provisions outlined in your bill, S. 2053, the Improved Vaccine Affordability and Availability Act. This legislation addresses several issues of critical importance to the Academy.

VACCINE INJURY COMPENSATION PROGRAM

Enacted in the late 1980's, with the support and guidance of the AAP, the National Vaccine Injury Compensation Program (VICP) has helped to stabilize what was then and appears to be again a fragile vaccine market. For the past 14 years, this program has been successful in its efforts to ensure an adequate supply of childhood vaccines, promote more research and development of even safer and better vaccines and most importantly to provide for a fair and just compensation program for those that suffer vaccine-related injuries. However, over time, as reflected in your legislative proposal, some modifications are necessary to ensure that the VICP is working at it full potential.

The AAP has reviewed S. 2053 and has the following comments beginning first and foremost with our strong support that all claims for vaccine-related injury or death first must be filed with the VICP.

The Academy concurs with several sections of the bill, some of which were previously proposed in 1999 by the Advisory Committee on Vaccine Compensation (ACCV) and you have incorporated in S. 2053. These include: Sections 206, 208, 209, 211, 212, 213 and 218. In addition, we concur with the ACCV's most recent recommendations in support of sections 204, 215, 216, 217, and 220. The AAP is particularly pleased that S. 2053 includes language that allows compensation for family counseling, ongoing review of childhood vaccine data and clarifies the definition of vaccines, manufacturers, and vaccine-related injury or death.

The AAP, however, does have specific concerns about Section 203, ''Parent Petitions for Compensation,'' as currently drafted. The AAP believes that petitions for compensation by parents or third parties must be adjudicated through the VICP and not through the judicial system. Moreover, in addition to potential constitutional issues that this provision may pose, we contend that such claims by parents should be separate and apart from awards to the vaccine-injured child. Although the issue of the compensation of parents and third parties was initially raised during the drafting of the VICP in the 1980's, it was rejected to maintain the focus of the Act on providing appropriate and just compensation that covers the life of the vaccine-injured child. We believed then, as well as now, that this approach is in the best interest of the child. The AAP would suggest that consideration could be given to providing, within the scope of the VICP, a provision for the loss of consorrum that would be separate from the award to the vaccine-injured child.

The AAP agrees with your identification in Section 207, of the need for an adjustment to the award for a vaccine-related death and for pain and suffering. However, we recommend a modification to this section as written. Use of the Consumer Price Index (CPI) to account for annual inflation in providing these benefit awards had been the original intent of Congress in drafting the VICP. The AAP encourages your adoption of this approach that was also recommended in 2001 by the ACCV. In 2002 dollars, such an award would be the equivalent of an award of over $300,000.

MENINGITIS AND INFLUENZA VACCINES

The AAP supports your recommendation in Section 103 to provide information to a variety of entities concerning bacterial meningitis. We are ready to work with you to implement these efforts.

This past June, the Advisory Committee of Immunization Practices (ACIP) made the decision to expand the Vaccine for Children (VFC) program coverage of the influenza vaccine to all healthy children aged 6 to 23 months. This will take effect March 1, 2003. As physicians, we are both aware that this age group has a high likelihood of hospitalization if they get the flu, therefore the availability of an adequate supply of the influenza vaccine is critical. In addition, this expanded recommendation means that adequate funding—both public and private—is essential. The estimated first-year costs of influenza vaccination of children, according to the Centers for Disease Control and Prevention, are $11.5 million in the VFC program, $2.6 million in Section 317 funds, and $1.42 million in state funds. This assumes vaccination of 20% of children aged 6 to 23 months (most requiring two doses), 15% of high-risk children aged 2 to 18 years, and 5% of children living with high-risk household contacts. These costs dramatically increase as we assume higher vaccination coverage rates for these populations of children. We applaud your support of increasing the supply of the influenza vaccine (Section 101) and encourage your proactive support to ensure sufficient public and private funding to meet the need and demand of the pediatric population. We should expect nothing less than, at a minimum, coverage by the Medicaid program for our youngest citizens as is received under Medicare for our senior citizens.

IMMUNIZATION RATES

The AAP appreciates the recognition of increasing immunization rates and data collection especially for adolescents as well as adults included in Section 102 of S. 2053. However, as pediatricians dedicated to the health, safety and well being of infants, children, adolescents and young adults we would be remiss if we also did not encourage the inclusion of *all* infants and children in the collection of data and in efforts to increase immunization rates. We have made remarkable progress. Presently, the rates of immunizations for children may well be at an all time high. But we still have significant disparities and pockets of need among rates of immunization for racial and ethnic groups. This is further exacerbated by the potential impact that vaccine shortages may have on the rates of immunizations. We cannot allow complacency or less vigilance of rates for infants and children at this critical time.

VACCINE SUPPLY

Although pediatricians over the years have encountered brief childhood vaccine shortages nothing compares to the most recent situation because of both the number of different vaccines involved and the scarcity of the available supply. For most of the first half of this year, the shortage of vaccines included eight of the 11 diseases preventable through routine vaccination of children. In many instances these shortages and delays by necessity resulted in temporary changes to immunization entry requirements for day care and school. Until just recently the longest-standing significant shortage was with the Td vaccine that began about a year ago and affected the ability to give teens the booster Td they need. Currently, the most serious shortage continues to be with the new 7-valent pneumococcal conjugate vaccine (PCV7, Prevnar). The AAP supports and appreciates the recognition in Section 104 of the need to maintain a sufficient vaccine supply. Moreover, we also support the discretionary authority of the Secretary of Health and Human Services to develop a national vaccine stockpile for a minimum of six months and as long as 12 months. This stockpile should include *all* of the routine recommended childhood vaccines and certain other vaccines that may be critical to the public's health such as Hepatitis A and meningococcal.

Thank you for your commitment to an immunization strategy that promotes the safety, efficacy as well as the adequacy of the supply of vaccines for the nation. We look forward to working with you as this legislation moves forward.

Sincerely,

LOUIS Z. COOPER,
President.

Mr. FRIST. I will read from a statement by Dr. Timothy Doran, testifying on behalf of AAP, to the Health, Education, Labor and Pensions Committee earlier this year on behalf of the American Academy of Pediatrics, relating to these provisions. He testified it was crucial:

> to preserve and strengthen the liability protections for consumers, manufacturers and physicians through the Vaccine Injury Compensation Program. The VICP has been an integral part of maintaining the vaccine market. Enacted in the last 1980's with the support and guidance of the American Academy of Pediatrics the VICP has helped to stabilize what was then and appears again to be a fragile vaccine market. We reiterate our strong support that all claims for vaccine-related injury or death must be filed first with the VICP. We appreciate the intent of the legislative proposal put forth by Sen. Frist and others to craft appropriate modifications as necessary to ensure that the VICP is working to its full potential.

Those are the provisions in the underlying bill. That is exactly what is in the homeland security legislation that would be stripped out by the Lieberman amendment.

The effect of these provisions in this bill is important because of the new era of bioterrorism, not knowing the direction the world is moving, recognizing we are unprotected today from smallpox. We now have a tremendous initiative by the administration, the private sector, and the public sector. We have better coordination and better public health infrastructure, better communication, better coordination. But at the end of the day, if smallpox is in your community and you know it, you know where to go, that is good, but unless you have a health care provider to put it on your arm, you are not protected. We do not know when it will hit again.

The fact the Advisory Commission on Childhood Vaccines endorses these provisions is important. The fact that the American Academy of Pediatrics endorses these provisions is also important. This shows they are not just pulled out or from a single company or they have not been thought through by both trial lawyers and patients and families and providers. We have heard the claims that these are not relevant to the underlying bill. But at the end of the day, in this world where we are at risk from bioterrorism, germs, viruses, I guarantee, based on everything I know and everything I have read, it is critical we increase our protection for these agents. That is what the underlying bill does.

The liability protections are important for health care providers. I argue,

also, for the facilities where they are administered and the manufacturers. If we allow out-of-control lawsuits to drive people out of the business of making these vaccines, no matter how good our research is, we will not be able to make vaccines which are critically important. We started with 12 companies and we are now down to 4 companies in the United States who make the vaccines. We have no guarantee they will stay in the business. They are unlikely to stay in the business if the huge lawsuits hit them in a way that simply is not favorably judged.

The provisions in the underlying bill only restate the original intent of Congress. They restate current law that individuals claiming injury for covered vaccines must first file for compensation under the vaccine injury compensation program, the VICP. These sections state what really should be obvious. A vaccine itself is the sum total of all of its parts as determined by our Food and Drug Administration, and that the manufacturers of vaccines include those who contribute to each of these various components. We have the vaccine, the components, the manufacturers who make the vaccine, and also the people who make the components.

Nothing in this language takes away one's right to sue. These provisions simply clarify and restate current law which requires all claims of injury related to a vaccine covered by the compensation program must first go through the compensation program before a lawsuit can be filed. There is much more that needs to be done, I believe in a more comprehensive way, but these provisions take the first step in a timely way, when time certainly matters.

In the long run, it is critical to expand the vaccine market for a whole range of microorganisms we are not protected from. We need to provide greater access to their vaccines. We need to be able to look the parents in the eye and say, when you take your child to the doctor or the public health center, those children, as well as all Americans, are not going to be in some way turned away by a barrier that we failed to address in the Senate. That is why a vaccine provision is necessary, is necessary now, is necessary in this homeland security bill.

I yield the floor.

Mr. REID. Mr. President, we have a consent in order for debate only until 1:30 p.m. There are numerous Senators who wish to speak. I ask unanimous consent that the order for debate only be extended until 3 o'clock today.

The PRESIDING OFFICER (Mrs. LINCOLN.) Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. REED. Madam President, I rise to discuss the amendment proposed by the Senator from Connecticut, Mr. LIEBERMAN. First, I commend the Senator from Connecticut, Mr. LIEBERMAN, not only for his amendment but also for his work on this very important legislation. He introduced this legislation months ago, even before the administration recognized the need for a homeland security bill. He has brought to the floor a very well-crafted, well-balanced, thoughtful piece of legislation, a product of deliberation over many months. It is disheartening at this moment to see a piece of legislation that has arisen in the last couple of days, almost 500 pages long, with greater omissions but also including what I argue in certain cases to be are extraneous provisions.

One of the provisions at issue is the of curtailing the ongoing discussion about the scope of the vaccine injury compensation program. We have a situation where vaccine manufacturers included a preservative, Thimerosal. This preservative has been alleged to have caused medical harm; it has not been scientifically proven. The Senator from Tennessee has indicated the Institute of Medicine has suggested there is no causal link between Thimerosal and autism or other childhood diseases. Yet there is ongoing litigation to determine if this, in fact, is a causal factor.

In a homeland security bill designed to focus our attention on the most urgent and dramatic threats to the United States, we find a very transparent attempt by at least one manufacturer to curtail potential liability because of their products. Frankly, there is no other rationale for putting this one provision in the legislation. It is inappropriate to be included in this legislation. It certainly does not raise the urgency of the issues the Senator from Tennessee discussed in terms of smallpox protection or potential for a mass casualty crisis because of the use of a biological agent.

In point of fact, Thimerosal was withdrawn from use in vaccines in 1999. So this is not a situation where we have to act today, in this very critical legislation, to ensure that manufacturers will continue to use this material. In fact, quite the contrary, this material, although no one has established a definitive link to any particular disease, has been voluntarily withdrawn from inclusion in vaccines.

So what we have is a situation where allegations have been made by parents of children that this preservative caused a disease in their child. And as the Senator from Tennessee rightly pointed out, in 1987 Congress enacted the Vaccine Injury Compensation Program as a no-fault alternative to the tort system for resolving these types of claims. The procedure for the compensation program is that you must first go through this system of evaluation of your claim and determination of award, if any, before you are allowed to pursue your claim in court.

What has occurred in this situation is that families have alleged that this particular element, Thimerosal, is not covered under the Vaccine Injury Compensation Program because, even though it is an ingredient listed on the label, was a contaminant or adulterant and, as a result, is not included in the scope of the VICP. That is a legal issue. That legal issue is being decided as we speak.

In fact, the VICP has requested that the Special Master of the U.S. Court of Federal Claims consider this question, and the Special Master is currently deliberating the issue, but has not yet ruled.

So here we are, at the 11th hour of this legislative session, trying to pass a homeland security bill. And what we find, mysteriously and surprisingly, is a provision in the bill that would short circuit the ongoing litigation, that would thrust our view on the courts. And, frankly, I suspect the Special Master has a much more attuned notion of what are the permutations, what are the consequences, what are the legal precedents of concluding whether or not Thimerosal is covered under the VICP, than we have on this floor.

Again, this is reduced quite easily, quite simply, quite transparently, to an attempt by an industry to insert, within a bill that is deemed to be absolutely necessary to pass, a provision that short circuits all of the legal discussion and potentially short circuits the rights of parents to recover the full compensatory and other damages that they deserve because of their child's illness.

None of this has been settled in terms of scientific cause and effect. But procedurally I think we have to, in short, allow the process to take place. It is not uncommon—in fact, it is quite common—that there are disputes about the interpretation of a particular statute, the coverage of a particular statute. But we seldom—unless of course there are very well connected and influential proponents—we seldom pick out these items for legislative relief prior to any type of judicial conclusion. So I suggest, particularly with regard to this matter—the striking of these specific provisions—is appropriate.

Indeed, one wonders why we are spending time debating this issue on a homeland security bill when in fact there are so many other needs that deserve our attention and deliberation. Many of my colleagues have suggested that, not just with regard to what is in this bill but, frankly, the need to support more vigorously those programs and policies that we already have in place might take precedence over simply recreating and reshuffling the deck in terms of the organization of the Federal Government with respect to homeland security.

I urge my colleagues to support Senator LIEBERMAN's efforts, at least to eliminate these items which are entirely extraneous to the homeland security bill, and in fact fall far from the urgency that is so apparent, appropriately, in the homeland security bill.

A final point I should say, and I think my colleague from Tennessee

said it so well, is that the issue of access to vaccines is a very critical issue that warrants our close attention. I was fortunate enough to chair a hearing of the Senate Health, Education, Labor and Pensions Committee in which the General Accounting Office testified about existing obstacles to a dependable and adequate supply of vaccines for children. The Senator from Tennessee, with his unique perspective as a physician, not only has been helpful but has taken a very prominent role, working with others and myself, in developing a comprehensive approach. That comprehensive approach might require an examination of the VICP program. It certainly might also require vaccine stockpiles, notification by manufacturers, if they chose not to produce a vaccine, so that our public health authorities know prior to the onset of a particular shortage that you will have one, two, three, or four manufacturers in the market to meet the demand.

So I would argue that a comprehensive approach to maintaining the supply of vaccine is important. The Senator from Tennessee has been working on it. I have been working on it. But that is not what we are talking about this afternoon. We are not talking about protecting the American public in a systematic, comprehensive way by ensuring that vaccines are available. What we are talking about today is a special interest provision that short circuits ongoing litigation involving a product that is no longer being used as a preservative. It is not about what we need to do today to protect ourselves from the very real threat of bioterrorism. Frankly, my assumption was, when we came to the floor to talk about the homeland security bill, we would be talking about what we need to do today to protect this country in the future.

So I urge my colleagues to support Senator LIEBERMAN, to recognize this bill would be much improved by adopting the provisions he has suggested.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, we have heard hours and weeks of debate on the Senate floor on this legislation. Among the principal arguments of some of the opponents of this bill is that President Bush and his administration cannot be trusted. I think the election last week proved that many Americans do believe our President can be trusted. He is a man of character. He is a man of integrity. He says what he means, and he means what he says.

I think an example of that was—if you recall, there were many people who were opposed to the passage of the Iraq resolution by the Senate. Many of the calls I got in opposition to it were from folks who believed the President, if the resolution passed, would peremptorily go into Iraq and take out Saddam Hussein.

I think all of us were quite impressed with his patience and the diplomacy of Secretary of State Powell that somehow was able to get through a very strong resolution in the Security Council that will finally enforce Iraq's compliance with those 16 previous resolutions of the United Nations.

I think we do have a President who can be trusted. I think that is the basis of this legislation. It is not perfect, but I am confident it will not be abused. It is not, as some say, an encroachment on legislative branch prerogatives, as I have heard some contend.

Madam President, I rise today to talk about an issue of critical importance to our Republic, and that is the urgent need for Federal civil service reform. I came to this floor earlier this fall to discuss how civil service reform can improve our ability to secure the homeland, and I rise again today because this issue remains at the crux of our renewed debate on the homeland security legislation.

As a member of the Governmental Affairs Committee and chairman and ranking member of the Oversight of Government Management subcommittee, I have worked to focus the spotlight on this issue since I came to the Senate 4 years ago. During the course of 12 hearings and numerous meetings with national leaders in management and public policy, it became crystal clear that we were in the midst of a human capital crisis in the U.S. Government. Moreover, it became clear that this crisis is growing and will only get worse unless this Congress acts decisively to address it.

Some people still ask what the human capital crisis is, how serious is it, and whether it really threatens the operations of the Federal Government. The human capital crisis is, simply stated, the inability of the Federal Government to properly manage its workforce. Robust personnel management includes the ability to recruit the best candidates, hire people in a timely manner, award performance bonuses and other motivational tools to provide training and professional development opportunities and the flexibilities to shape a balanced workforce. Good management includes the flexibility to act quickly and to compete as an employer of choice in this fast-paced 21st century knowledge economy.

Madam President, I believe that if a Federal agency or department is important enough to receive the hard-earned tax dollars of my constituents and yours, we have a moral responsibility to see to it that the people's money is spent wisely. Outdated personnel practices and lack of training not only put agencies at risk of not being able to fulfill their mission and providing needed services to the American people, they also represent wasteful spending. We simply must provide the flexibility agencies need and give them the right tools to do their work.

Within 2 years, more than 50 percent of the 1.8 million person Federal workforce will be eligible for early or regular retirement. It is virtually impossible to predict accurately the amount of experience and institutional knowledge that is literally going to walk out the door by the end of the decade. That is why it is not only right to focus attention on our human capital crisis, it is essential.

Unfortuantely, until recent months, very few Members of Congress have paid much attention to this growing set of challenges.

Now, as the Senate is considering legislation designed to reorganize the Federal Government in a way that will help secure our Nation against future terrorist attacks, civil service reform is front and center. This issue, which for years has not been substantively addressed, is of paramount importance in the consideration of the most significant government reorganization to take place in our Nation in half a century. It's about time.

Congress last enacted major civil service legislation for the entire Federal Government 24 years ago in 1978. To operate effectively, the Federal Government cannot afford to revise its personnel laws only every quarter century. So much has changed over the years, and changing times require new thinking and new laws—policies that allow flexibility in our Federal government's civil service system.

During the 107th Congress, I have worked with some of the Nation's premier experts on public management to determine what new flexibilities are necessary to create a world-class 21st century Federal workforce. These include: the Council for Excellence in Government, Partnership for Public Service, Private Sector Council, Brookings Institution, National Academy of Public Administration, and the Volcker Commission; Administration officials including OPM Director Kay James, and former OMB Deputy Director and current NASA Administrator, Sean O'Keefe; and representatives of federal employee groups like Bobby Harnage of the American Federation of Government Employees, Colleen Kelley of the National Treasury Employees Union, and Carol Bonosaro of the Senior Executives' Association. I am grateful for the respective and recommendations all of these groups provided and we drafted our legislation based on their insights.

Our bill, S. 2651, the Federal Workforce Improvement Act of 2002, which I introduced with Senators THOMPSON and COCHRAN, is designed to get the right people with the right skills in the right jobs at the right time. It is a consensus package of human capital reforms that I believe will have a positive impact on the Federal Government's personnel management.

Working closely with Senator AKAKA, I successfully amended key provisions of this bill to the homeland security legislation during its consideration by the Governmental Affairs Committee in July. I am grateful for the support that Senator AKAKA provided as we adopted those important government-

wide personnel flexibilities. I only wish we had put more of S. 2651 in the homeland security bill. We need to get it all done.

Next year, I intend to introduce these provisions again, as well as other human capital legislation that was not enacted this year. For example S. 1817, which would make Federal student loan forgiveness benefits tax-free; S. 1913, the Digital Tech Corps Act, which would establish a public-private exchange program for IT professionals, and S. 2765, the Federal Law Enforcement Pay Equity and Reform Act, which would create an employee exchange program between Federal agencies that perform law enforcement functions and state and local law enforcement agencies. These bills would strengthen the performance of our Federal workforce throughout the government.

In the 108th Congress, I also intend to take a closer look at compensation issues, especially for the Federal law enforcement community. Serious recruitment and retention challenges have been a problem at agencies such as the FBI and other law enforcement agencies for a long time and we simply have to address this issue.

The governmentwide human capital provisions we have already included in the homeland security legislation will have an impact not only on the new department, but on all Federal agencies. Our language will help the Federal Government begin to address its human capital challenges—challenges that extend far beyond the corridors of the proposed Department of Homeland Security.

The language does the following:

It creates Chief Human Capital Officers at the Federal Government's 24 largest departments and agencies—officials who will have responsibility for selecting, developing, training and managing a high-quality workforce;

And, it establishes an interagency Chief Human Capital Officers Council, chaired by the OPM Director, to advise and coordinate the personnel functions of each agency and meet with union representatives at least annually.

In other words, we are giving human capital a much higher priority in the Federal Government, just as it is given in most corporations that are successful.

It requires OPM to design a set of systems, including metrics, for assessing agencies' human capital management, something that has been largely ignored;

It reforms the competitive service hiring process, allowing agencies, consistent with merit principles (including veterans' preference), to use an alternative category ranking method for selecting new employees instead of the ''Rule of 3,'' making the process more efficient and fair—a practice that has been very successful at the Department of Agriculture for the past decade;

It provides government wide authority for offering voluntary separation incentive payments and voluntary early retirement (''buyouts'' and ''early outs'') for the purposes of workforce reshaping, not downsizing. This authority, which I was able to secure with legislation three years ago, is currently being used effectively on a limited basis at the Department of Defense;

It lifts the total annual compensation cap for senior executives, allowing performance bonuses to be paid in full in a single year;

And, it reduces restrictions on providing academic degree training to Federal employees, thereby emphasizing the importance of individual professional development.

All of these things I just talked about are not only going to impact the homeland security department, but they are governmentwide. All agencies will be able to take advantage of these provisions in the homeland security bill.

In light of the fact that there has not been government-wide civil service reform in a quarter century and, as the Hart-Rudman Commission noted just last year, personnel is the basis for maintaining national security, it is absolutely appropriate that this legislation be included in the bill to create the Department of Homeland Security. In fact, in testimony before the Subcommittee on Oversight of Government Management, former Defense Secretary and member of the Commission, James Schlesinger noted:

> . . . it is the Commission's view that fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy.

If we do not fix the personnel problem, we are not going to be able to fix anything else that is wrong with the system.

I thank the leadership on both sides of the aisle for including these important provisions in the compromise language we are considering today.

The Homeland Security Department is not the first—and not the last—agency that needs to have greater flexibility. Flexibilities and reforms, similar to those proposed in the compromise language for the Department of Homeland Security, which I will describe in a moment, are needed throughout the executive branch.

I would like to take a few moments now to discuss the personnel provisions in the compromise language that apply specifically to the new department. As I said, I have worked with Republicans and Democrats on these provisions and I believe this language will provide the Department with the tools it needs to get the job done, and at the same time will respect the rights of those union workers being transferred into the new department.

First, the compromise language includes the House-passed language proposed by Representatives CONNIE MORELLA and CHRIS SHAYS with an additional provision that I have recommended. This language would, for the first time, limit the current authority of the President to exclude an agency or agency subdivision from participation in a collective bargaining unit.

Under current law, the President may exclude participation in a collective bargaining unit upon determining that the entity has as a primary function intelligence, counterintelligence, investigative or national security work and that permitting the entity to have collective bargaining rights would be inconsistent with national security requirements and considerations.

The compromise language would limit the President's current authority only with regard to the new department. It would prohibit the President from using the exclusionary authority unless the mission and responsibilities of a transferred agency materially change and a majority of the employees within such an agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism. So in effect, we have limited the President's authority to exclude employees from union membership.

The language does provide, however, that the President could waive the above limitations on his authority if he determines in writing that their use would have a substantial adverse impact on the department's ability to protect homeland security. If he does this, I presume he will do it under this provision.

We have also added some language I have proposed requiring that if the President does not execute his authority under the Morella language, he must notify Congress at least 10 days prior to the issuance of his written order. This will bring the light of day into his decisionmaking process. I don't expect him to do it, but I think that is one way we can guarantee that such action will not be arbitrary and capricious.

The second compromise provision in this bill was proposed by Representatives JACK QUINN and ROB PORTMAN over in the House. I want everyone to understand this so they can see how much more limited this bill is than what the President originally sent us.

That initial proposal featured a personnel system that was similar to the one established last fall for the Transportation Security Administration, which waived most of title 5. Of course, the Homeland Security Department, the President realized Congress would flesh out his proposal, and that is what happened. This legislation we are considering would create a new agency under title 5, allowing modifications in only six areas.

The House-passed version is less flexible than what the administration wanted, but it is designed to deal with the personnel flexibility sought by the President, and to address the collective bargaining rights that many of our colleagues seek to protect, including me.

This language would preserve employee rights, including hiring and promotion based on merit and equal pay for equal work, and would protect employees from improper political influence and reprisal for whistleblowing. Employees would still be protected from prohibited personnel practices, such as illegal discrimination, politicized hiring or promotion processes, and violation of veterans' preference requirements.

Furthermore, employees would still have the right to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them.

The compromise language requires the new Department collaborate with unions and other employee organizations in creating its personnel system. The language also improves the arbitration process by ensuring both employees and management concerns are fully and publicly vetted.

If a collective bargaining unit disagrees with a management proposal related to one of the 6 areas subject to modification, the union representative would have 30 days to consult with agency management on rule changes and offer recommendations. If agreement is not reached, the Secretary of Homeland Security could declare an impasse and submit the dispute to the Federal Mediation and Conciliation Service, a process that could last an additional 30 days. At the conclusion of that period, the Secretary could proceed with the proposed changes, regardless of the mediator's recommendations.

Again, this is very much like the language I added requiring the President to make public his decision if he waives the Morella language. In this case, at the beginning of the 30-day arbitration period, the differences between collective bargaining unit employees and management would be established so everyone would know what the differences are. In other words, if there is a difference of opinion, it is aired publicly. It is not going to be hidden somewhere. We are all going to know about it. The American people will know about it, and Congress will know about it.

After the 30-day period, the differences would be resolved. At the end of the total of 60 days, it is over.

I would have been open to more robust participation of the Federal Mediation and Conciliation Service or another third-party mediator in resolving disagreements over title 5 modifications. However, the system established by this legislation is a compromise, and I support it.

The real test of this language is going to be how the administration handles work rule changes, whether or not disputes are handled openly, and the unions' concerns treated fairly. It will be imperative for the administration to demonstrate its commitment to an open and fair process in a spirit of cooperation rather than confrontation with the unions.

If we do not resolve some of the differences between the administration and the unions, the chances of this new agency being successful are remote. And I have encouraged the President to meet with Bobby Harnage and with Colleen Kelley.

As a mayor and Governor, I went through reorganizations, and I learned that you cannot get it done unless you have built trust with your labor union members.

I would like to make one final observation on this bill before us today. We should not sacrifice the good for the perfect. I recognize Members on both sides of the aisle have some concerns about certain provisions. So do I. For example, I disagree with the language that will transfer the first responder program from its current location in FEMA to the new Department's Border Security Directorate rather than the Emergency Preparedness and Response Directorate. That does not make sense to me. Nevertheless, the legislation before us to create a new Department of Homeland Security, I think, overall, is a good bill, and I intend to vote for it.

I have been one of the leaders on civil service reform during the last two sessions of Congress. I believe I have probably dedicated more time than any other Senator to addressing the Federal Government's personnel needs. I have tried to raise the profile of this issue, and then to work in good faith with all interested parties to develop solutions.

Based on my work, I want my colleagues to know I feel that the personnel provisions in the compromise language can go a long way towards putting personnel management in the executive branch back on track.

I urge the passage of this very important bill. We have to get on with it. It is going to take time to establish this new department. We have to secure the homeland. We need to get going.

I thank the Chair.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I compliment the Senator from Ohio for his very thoughtful and important comments in which he reached to a deeper level, which I was going to do, but now I do not feel the need to because he spoke of the importance for good working relations between management and those who work with management, particularly in a field as important as homeland security.

I rise today to lend my support to the Homeland Security Act. I thank Senator LIEBERMAN for taking really the lead, before anybody else did, on this issue and for his tireless work to bring the new Department to the point it is today. I think it is a remarkable feat on his part.

I also would be remiss in not thanking my senior colleague from West Virginia, with whom I disagree on this important issue, but who has, nevertheless, led the opposition with clarity, with conviction, and passion.

In the end, I am glad it now appears we will be able to answer the President's call to pass this legislation, and to do so before we adjourn this session.

The tragedies of September 11, and the continuing terrorist threat to our Nation, demand powerful and decisive action from us and from the President.

He has asked this Congress, after the leadership of Senator LIEBERMAN, to support him by creating a new Department of Homeland Security. I think we should do that. The President believes this massive reorganization of government, combining our currently fragmented homeland security functions into a single Cabinet-level agency, makes sense.

Anybody who thinks we are prepared, no matter what reports you read—including the most recent ones—that we are prepared to handle attacks of any sort, is just greatly wrong. In each of our individual States, as you look at hospitals and police departments, and all the rest, we know that is the case.

So I think a single Cabinet-level agency is crucial in providing this Nation and its citizens with the protection they deserve.

I agree this historic reorganization is a bold and necessary step that we, as lawmakers, must take, quite frankly, in order to be faithful to our first and foremost duty as lawmakers—I do not think this is generally understood by the American people—because our first and foremost duty as lawmakers is the guaranteeing of the safety of people we represent in our individual States, and also throughout the country.

I hope all who are present will recognize this is but a first step. This is going to be an extraordinarily complicated evolution.

When the Aviation Security Act was passed not very long after September 11, it became the assumption of the American people that all airport security would be in place, ready to go, with all of the equipment and people trained, within a matter of months. I said from the very beginning it was probably a matter of 3 to 4 to 5 years before we would arrive at a point where we had the kind of aviation security, the training, personnel, and the equipment that we needed.

People have to understand all of this is going to take time, but you can't start the clock running unless you pass a bill to get homeland security going.

I don't think anybody should be under the illusion that this new Department will solve all of our security problems at home. I hope we will remember the lessons of the Goldwater-Nichols Act of 1986, which basically made the largest previous reorganization of Government—that is, the creation of the Department of Defense in 1947—a working reality. I strongly believe this new Department of Homeland Security will be a work in progress; that the public has to understand it is a work in progress; that you cannot take 170,000 people, meld them together, create a whole new series of

layers of intelligence agencies, and expect them all to work very crisply together, when they don't work crisply together now. Nevertheless, there needs to be a central point. I believe in that firmly.

So with the understanding it is a work in progress, we will, therefore, have to shepherd its ongoing development, and we will.

Although the homeland security act should not be mistaken for the definitive answer for all of our security woes, I believe it is a strong piece of legislation with a lot of potential to serve its purpose and all of us and the people we represent well.

The Department we are creating is strikingly similar to the original proposals both the White House and Senate introduced last summer. It has been some time since then.

The new Department will combine the functions of 22 Federal agencies and subagencies. Again, this will be complicated. There will be all kinds of problems. We have to assume that. That is not a bad thing. That is the evolution of anything that large that takes place, whether it is in business or in government; change, reorganization of that sort, does not happen quickly.

By placing these agencies and all of their people in one new Department, we should foster much better communication—it will take time—eliminate internal redundancies—that will take time—and greatly improve our ability to detect, respond to, and recover from future actions from terrorism.

The new Department is intended to be a cooperative environment in which intelligence from all sources is brought together, analyzed, and then used more efficiently than in the past, guiding the customers, as the term is used, which is the President and his National Security Council, allowing us a much clearer view of all threats from whatever source against America.

The Department is charged with carefully coordinating with State and local governments, none of which is prepared at this point to handle what could very well and probably will be confronting them. As well, I might say, private industry faces this same challenge. Some have responded, most have not, partly because they don't know what to do. Secondly, the economy is not strong, and they don't feel they can do that now. But their condition will be much worse if they don't. So to them we have to collect and pass along threat information. They have to respond. This whole system has to begin to function in a rational way.

This is the most serious subject we could be discussing in the Halls of this Congress. Border security should be greatly improved under the new agency. Our ability to prevent chemical and biological and radiological and nuclear threats may be stronger than ever before. We have to make sure that is the case.

In the event the horrors of terrorism, in fact, visit our shores again, as I think they will, the new Department should be better equipped to respond with disaster relief.

However, we must not forget that many of the assets that we will need to respond to disaster or terrorism will continue to reside in agencies which are outside of the homeland security bill. The one that comes to my mind is, of course, the Veterans' Administration, which is the largest health care system in this country. That whole system is going to have to be not incorporated in the bill but incorporated into the process which I hope this bill will engender of its own force and momentum.

I have confidence in this act. I nevertheless would like to go on record as saying that clearly it does not do everything that I and many of my colleagues, including the Chair, to whom I am particularly grateful, wanted. I regret that we were unable to work effectively to create a new Department where dedicated employees are guaranteed the civil service protection to which they are entitled. However, having said that, I think that, as the Senator from Ohio said in his very powerful and deep speech, I have to believe our President will act wisely, partly because of the light that will be on him, partly because of the situation, partly because of the need for workers to be happy and to be doing their work well, assuming the flexibility that we give him only when he really needs that, and that he will be wise in that respect.

So with this act, Congress and the White House have cooperated to make a powerful statement to our citizens as well as to our enemies. We will work together to ensure that the American people are as free as possible from terror and as free as possible from the fear of terrorism.

I am very thankful to have been able to play a role in the creation of the Department. I look forward to playing a continuing role, as I indicated, in watching this development in sort of a congressional oversight mode.

I ask my colleagues to join with their support of this homeland security act.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I take to the floor to talk about where we are in the homeland security bill, and to call attention to some special interest provisions added to this bill in the hope that the American people will take a look at what is happening to their country.

As Senator VOINOVICH has stated, Osama bin Laden is still alive. While we cannot be positive of that, it appears that he is still alive. Certainly, al-Qaida is alive and certainly al-Qaida is working full time to hurt us—meaning the American people. That we know. The world is a terribly dangerous place.

Taking care of America is crucial. That is why I was so stunned and upset when the President refused to spend $5.1 billion that this Congress gave him for homeland security to ensure that our ports are more secure, to ensure that our nuclear power plants are safe, to ensure that our chemical plants are safe, to ensure that our airports are safer, and to speed up development of necessary vaccines. I was stunned when the President did what he did.

I was also stunned when he opposed the idea of making the Homeland Security Department a Cabinet position. Stunned. Only after Senator LIEBERMAN and his committee had voted out a bill—at least the Committee Democrats did—did the President decided he wanted to support this concept.

We know one thing about September 11th. We know that the CIA and the FBI were not speaking to each other. We know that they were not communicating with each other. And yet there is not one thing in this homeland security bill that addresses that issue.

The homeland security bill tinkers around the edges with creating new ways for the intelligence community to let the Homeland Security Director know what is happening. But we do not get to the heart of that cultural problem that exists between these agencies. That is amazing to me, since we know one thing—that there was a breakdown in communication between these two agencies.

I also happen to believe that massive reorganization is generally an invitation to chaos and more bureaucracy. I began my political career a long time ago in a small county of about 200,000 people. We found that when you combine agencies in the name of trying to be efficient, oftentimes you have less accountability. That is what is happening here—combining all of these agencies, with some 170,000 people, creating all kinds of subheads, and so on and so forth.

So I am very worried. I hope to be proven wrong because this bill will pass, but I am worried that there will be less accountability rather than more. That is why I supported the Byrd amendment, way back when we started this debate, which would create a Cabinet level Homeland Security Director and a streamlined Homeland Security Department, with people who would be held accountable, and with a way for the Congress to continue to play a role as we develop this very important agency. I thought that would have been the way to go. I was proud to stand with ROBERT BYRD on his amendment.

I happen to believe in my heart of hearts that the President's change of heart about the need for a homeland security department had a lot to do with the fact that he is very interested in stripping away worker protections. I have to believe that deep in my heart. Why do I say that? Because of his actions. Of the 170,000 people in the new Department, only 40,000 of them have worker protection, that is all. There are people at the bottom of the barrel,

in terms of pay; the secretaries, the janitors, the file clerks. I don't understand—and I have said this before on the floor of the Senate—why a President who calls himself ''compassionate'' would want to take away the most minimum of rights from such people, endanger their level of health care. I don't understand why this President would have held up this bill all this time for that.

Now there is a compromise. I am glad a few more protections are added. That is good. But I don't know how a person who says he is compassionate could go after people who have the most minimal job protections. They don't have the right to strike. No Federal employee has the right to strike. They can scarcely collectively bargain given the provisions of this bill. That, to me, is a sour note in this debate and continues to weigh on my heart—that maybe this President changed his mind, in part, because of this ''opportunity'' to take after these workers. It is really a sad thing to me.

If we look at the economy today—and I know my colleague from West Virginia gets this because he talks to me about it all the time—it is a tough economy we have. The fact is, in the last couple of years, as the President came into power, we have seen a tremendous loss of private sector jobs. More jobs have been lost than at any time in 50 years. We know what is happening to people's retirement security because of the stock market, with the worst performance in more than 50 years. People are frightened. So why do you go after 40,000 workers and give them insecurity?

We heard yesterday that the President is going to move more than 800,000 jobs into the private sector from the Federal Government—more than 800,000 jobs. At a time when people are feeling insecurity, he is going to throw them out into the marketplace where they will have very little security. There is something missing here that is upsetting to me.

So here we are. In my opinion, we have a bad choice to make when we finally vote on homeland security. I will make what I consider to be the best of that bad choice—a choice between no homeland security bill and one that I believe was thrown together in a way that is going to make it less accountable and is going to hit a lot of bumps in the road. Taking FEMA and putting it in there—what will happen when we have an earthquake in California? What is going to happen with the Coast Guard when they have to do search and rescue? These are troubling questions to me.

We will have that choice to make. That is life. We often don't have great choices here, and we will make that decision. But one thing I know I am going to vote for with great pride on Monday is the Daschle-Lieberman amendment.

I see a couple of colleagues on the floor who care about these issues, and I want to recognize my friend from Michigan, who called us together today to explore the ramifications of a particular rider that was added in the dead of night. I will explain it, and I hope she will engage me in a bit of a colloquy.

In the dead of night, with no one watching, after we thought we had made the compromise on these workers, a few things were snuck into this bill. A big campaign contributor of the Republican Party was rewarded phenomenally. A provision was added to the homeland security bill that protected that big contributor but it has nothing to do with homeland security or protecting the American people. In fact, I say that this provision which was added will create insecurity in our homeland by sending a message to thousands of families that their children's health takes a distant second to the interests of large, wealthy, powerful corporate America.

Let me explain. In my State of California, autism—a very haunting and mysterious brain disorder—has increased an astonishing 273 percent over the last decade and a half. Dr. Neil Halsey, a respected pediatrician and an expert in vaccination, for years said there was no connection between vaccines and autism. I am quoting from an article that appeared in Sunday's New York Times. There is ''some real risk to children,'' he said, ''from vaccines that contain mercury. It is used as a preservative in some of these vaccines.''

So what provisions did the Republicans put into the bill? A provision that holds harmless the company that produces Thimerosal, a mercury-based preservatives for vaccines.

What does that have to do with homeland security? Absolutely nothing. Childhood vaccines have nothing to do at all with homeland security. What does it mean if this stands and we don't have the guts to strip it out? What does it mean to real people who are fighting this disease? Many of the families have filed class action lawsuits because—if you have ever seen an autistic child, although their symptoms range from mild to severe, in severe cases you are talking about essentially 24-hour care for that child. What will these families have to do? They will have to go to a taxpayer fund—a compensation fund that taxpayers pay for—which has very little money left in it, which is capped at an amount that will never pay for the cost of raising a child with this terrible disease.

We heard testimony on the House side that some families trying to collect from this compensation fund have had to fight for 10 years to receive their awards.

All the while, if this special interest rider passes, the companies that cause the problems will continue about their business. There is a lot about this rider which is upsetting and disturbing.

First of all, how would you feel if you were a parent of a young child and all of a sudden, without any science, you have a liability waiver for this mercury compound? They are going to think: My goodness, if the Republicans—the Bush administration—is protecting their biggest contributors, maybe they know something we do not know; that this is really a problem because why would they bother doing it if they were not worried?

This has nothing to do with homeland security. If it did, they would have said smallpox vaccines; they would have cited the vaccines.

There are moments when I wonder why we are here if we are not willing to stand up and fight for the American people. The special interests, the powerful interests have so much behind them. They can so easily hire the lawyers they need, the representatives they need to come here to lobby. But the average family that gets struck with this type of a tragedy, all they have is the love in their family to get them through. What are we doing here? We have to help these people, not have a special interest provision that is put in in the dead of night that says to them: We do not care about you; we do not care about your kids; and if you have to suffer through, too bad, because we are going to protect the people who write the large contributions.

(Mr. ROCKEFELLER assumed the chair.)

Ms. STABENOW. Will my friend from California yield?

Mrs. BOXER. I will be happy to yield to my friend.

Ms. STABENOW. On that point, we actually have counted the number of pharmaceutical lobbyists in the Senate. There are six lobbyists for every Member of the Senate: Six for me, six for the Senator from California, six for the Senator from New Jersey. Six lobbyists are being paid full time to lobby and bring in these kinds of provisions and also to kill other provisions.

We passed legislation to lower prescription drug prices for everyone, to increase competition of generic drugs, and open the border to Canada. There is a bill that has been languishing in the House for months that has been stopped by the same group that could take the time at the last minute to put this outrageous provision into the homeland security bill.

I thank the Senator from California for her eloquence and for standing up for families, because as a mother—and I know she is as well—it is outrageous to think that parents who are concerned about their children will not have an opportunity to have their day in court over something that potentially is extremely damaging and hurtful to them.

Mrs. BOXER. I thank my friend for her leadership. I point out to my colleagues who are here that four desks down from me sat Paul Wellstone for 12 years. If Paul was here now, he would be stepping outside that desk and telling us: Now is the time to stand up for people, for children, for people without a voice.

Autistic kids sometimes cannot talk. We have to stand up and be counted on Monday when this vote takes place and take the consequences if somebody gets mad at us here or there because there is no reason to be here if we do not protect the people of this country.

Mr. President, I am not going to take the Senate's time anymore. I have expressed myself. I look forward to casting a vote on the Daschle-Lieberman amendment to strike this rider and the other riders that were attached at the last minute, which I think is just a blatant attempt to give out special favors to the detriment of the American people.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. I thank the Chair.

Mr. President, before I begin, I commend the Senator from California on raising not only the issue regarding childhood vaccines but the whole issue of adding riders about which I am going to speak in a moment on a whole series of issues. It makes a complicated and troubling piece of legislation even more difficult to weigh and balance as to whether it is truly one that gets us to a more secure future for America. All of us want to protect our freedoms and protect the lives of citizens across this country, but one has to think about it in the context of what is the give and take and whether it actually works.

My first comment is not dissimilar to what I heard from a number of Members who are supportive and not supportive of the direction we are taking. It is hard to conceive of how we can put 170,000 or 175,000 people together who had trouble in the organization that was in place before when it was smaller and more manageable and come up with a sense of security that we are actually going to make things better by pushing them together.

At least in my experience in my private life, sometimes mergers do not always amount to what is intended, and value is not always created. It certainly leads to a question of whether we have the flexibility and responsiveness in an organizational structure.

I am certainly troubled by the idea of creating a larger organization made up of parts that apparently have not been working so well historically. Clearly, we need to take positive steps. It may very well be we are doing that with the proposal with regard to homeland security, but at least as one individual, I am troubled with the overall size of the operation and whether it will bring about the responsiveness to the need, which I think all of us feel quite clearly needs to be addressed, of protecting the American people.

I also am equally concerned about a number of these provisions that were added in a closed manner.

I have to second my colleague's comments with regard to liability protection for pharmaceutical companies on vaccines. That should be an issue that is debated openly and understood. It should be fully vetted. It is an open question about whether this is a serious problem, but I do not think adding it as a rider that is particularly attractive to a particular segment is germane to the context of homeland security. It attacks the fundamental premise about which we are talking.

I wish to relate that to something about which I will talk which is really the heart of my comments today—chemical plant security—which I think is missing from the homeland security debate.

It is also troubling and hard to understand why pieces of the Wellstone amendment which prohibited contracting with corporate expatriates is pulled out of the bill. We have some adds and we have some drops. I am not sure why we are doing that. This was unanimously accepted by the Senate. I find it very difficult to understand why we are resourcing, promoting, or allowing those companies which choose not to be supportive of America with their tax dollars to have equal access and participate in contracting with the Federal Government with regard to homeland security issues.

It is hard for me to understand why this particular amendment was dropped. There are a whole series of these. There are special earmarks for a given university. There are liability protection issues that really get at tort reform debates which we ought to have on the Senate floor—no question about that—with regard to airport screening, negligent manufacturing of homeland security devices. All of those issues should be the subject of fair debates. So why are they added as a so-called element of compromise, on the floor of the Senate, without a debate? It is unclear to me, other than we are more interested in rewarding special interests than the general interests, which is what I think is the basic theme of both the administration and certainly Senator LIEBERMAN's initial proposal coming out of the Governmental Affairs Committee with regard to homeland security. There is a need. We all embrace that concept and think we should move forward.

For the life of me, I do not understand why we are putting down new barriers to the Transportation Security Agency with respect to rules for rail transportation in this country—it is one of those areas of vulnerability assessments that almost anyone would talk about—other than we are responsive to special interests and that it is going to cost too much.

As I earlier entered into a colloquy with the senior Senator from West Virginia on the freedom of information activities, I continue to be troubled as to why we are writing a blank check to cover up the kind of advisory meetings that could be held with private industry, hand-picked advisers, with regard to setting policy within an administration.

There may be things that should be carved out from public view, but when private sector individuals can have a perspective of conflict of interest in the advice, it seems perfectly clear that ought to be made available to the American public, and I am very troubled by the blank check mentality we are taking with regard to secret activity, particularly when it involves the private sector.

We have had that debate with regard to our energy policies, and I think we are now making that a normal course of events.

So for all of those reasons—and those are mostly adds, except for maybe the drop with regard to the Wellstone initiative—I am troubled.

Finally, this National Commission on September 11 and the review, to me, is incomprehensible. Hopefully we will find another way to bring this back, but in my 30 years in the world of management I have never seen a situation where you have a failure, a breakdown, a problem that people do not stand back and say, what went wrong and what could we have done differently to make sure we are secure going forward, without an independent review that people can have confidence that all of the facts are laid upon the table, including, by the way, observing whether congressional oversight is operated with its most effective provision.

I find it difficult to understand why we are investing so much with so great certainty about the direction we should be taking with regard to homeland security.

As I said, this is going to be a tough weekend for me because I have trouble with the conceptual issue of putting so many people together. Now that the senior Senator from West Virginia is present, we could argue that the Constitution he is carrying in his pocket would also raise serious questions about some of the authorities there. These special additions and drops at the end are particularly concerning to me.

So for all of those reasons, this is going to be a very difficult weekend for weighing and balancing these various elements because, like everyone else, and particularly for the people of New Jersey who lost 691 lives on September 11, there is an expectation that we have a responsibility to protect our homeland. It is obvious. It is self-evident. But it is not obvious and self-evident that we are, in my view, improving dramatically that effort.

I certainly believe there are risks in the transition from where we are today to the full implementation of this measure and that we may very well be operating under the analogy that people talk about of running a marathon while you are performing open heart surgery. Whether we are going to be more secure while that process is going on in the midst of a war is an open question. It has not been proven to me that we are actually developing greater certainty.

Now, there is another issue which has not been discussed on which I have worked very hard through most of this year and feel deeply about because it deeply impacts my State. Actually, it impacts almost every State in the Union.

I see the ranking member from the Committee on Environment and Public Works, the Senator from New Hampshire, who has heard much of this discussion in the committee, which I think is something that is missing from this bill, and that is the need to protect Americans from attacks on our Nation's privately owned chemical facilities.

I realize this is also one of those things that is futile in the context of the cloture debate, but it is absolutely essential that America be aware of an issue that needs to be focused on and needs to be moved forward. I would be remiss in not having brought this farther in the process, and hopefully this discussion and the efforts that have gone on before will keep it in the debate, in the committees, and in this new Department which is most certainly going to come to pass.

I will discuss it in the context that there are literally thousands of chemical facilities in the United States where a chemical release could expose tens of thousands of Americans to highly toxic gases. That is why these facilities are potentially so attractive to terrorists. As a matter of fact, if one goes to a chemical facility in Israel, they will see it protected by a security infrastructure that is not unlike what one would see at a nuclear powerplant in the United States.

As I will relate, if someone visits some of these facilities in the United States, they will see an entirely different standard by which we are securing them. In fact, there are currently no Federal security standards for chemical facilities—none—so that the private sector is left to do whatever it desires or believes it can afford. It is a completely voluntary situation.

Many facilities simply have not fulfilled their responsibilities, in my view. Many are certainly vulnerable to attack. As the statistics and studies show, literally millions of Americans are at risk. They are at risk in New Jersey. If one flies into Newark Airport and looks at the chemical plant storage facilities, the refining facilities that are right in the path of the landing strips, they will get a sense of the kind of exposure we have.

Also, if one looks at how easy it is to access, which I will speak more clearly to in a minute, they get an even greater sense of the insecurity with regard to this area of our infrastructure.

According to the EPA, there are 123 facilities in 24 States where a chemical release could expose more than 1 million people to highly toxic chemicals. One of these plants in New Jersey has exposure to 7½ million people inside the metropolitan region of New York. A lot of chemical plants are located in our urban communities, not scattered out into the hinterland but right smack dab in the middle of where we have high concentrations of populations. There are about 750 facilities in 39 States where chemical release could expose more than 100,000 people to toxic chemicals. There are nearly 3,000 facilities spread across 49 States where a chemical release could expose more than 10,000 people to highly toxic chemicals.

I think the numbers speak for themselves, and they are staggering. There is a large exposure in a broad context in our Nation.

A single attack on a facility could unleash highly toxic chemicals such as chlorine, ammonia, and hydrogen fluoride that cause widespread injuries and death. Considering the literally thousands of potentially deadly facilities across the country, we cannot escape the conclusion that it represents a major vulnerability, a major homeland security problem.

It is not just my opinion. In fact, the Justice Department issued a report on this matter a year and a half before September 11. I will read a brief excerpt from a summary of the report issued April 18, 2000.

> We have concluded the risk of terrorists attempting in the foreseeable future causing industrial, chemical release is both real and credible . . . Increasingly, terrorists engineer their attacks to cause mass casualities to the populace and/or more large-scale damage to property. Terrorists or other criminals are likely to view the potential of chemical release from an industrial facility as a relatively attractive means of achieving these goals.

That report was issued before September 11. Its conclusions have been echoed by several other Government agencies and individuals since.

For example, Governor Ridge said the following in recent testimony before EPW:

> The fact is, we have a very diversified economy and our enemies look at some of our economic assets as targets. And clearly, the chemical facilities are one of them. We know that there have been reports validated about security deficiencies at dozens and dozens of those.

Let me talk about the reports Governor Ridge may have been referring to. Earlier this year, the Pittsburgh Tribune-Review conducted a major investigation of western Pennsylvania. Here is what they found:

> A Pittsburgh Tribune-Review investigation has shown that intruder has unfettered access to 30 of the region's deadliest stockpiles of toxins and explosives, despite repeated warnings from the Federal intelligence agencies to safeguard large chemical tanks.

This Tribune-Review went on to say:

> Security was so lax at the 30 sites that in broad daylight a Trib reporter—wearing a press pass and carrying a camera—could walk or drive right up to tanks, pipes and control rooms considered key targets for terrorists.

After this initial story, the Tribune-Review expanded the scope of investigation. They went to Houston, Baltimore, and Chicago to see if what they found in western Pennsylvania was a fluke. They looked at 30 or more facilities in 3 other States and the findings were equally disturbing.

I point out in metropolitan New York the local television station has done similar sorts of walk-ons to chemical plant facilities, including the one that has the 7.5 million people exposure in metropolitan New York.

This is troubling, to say the least. There is a pattern. Perhaps that is why the chemical industry got low marks for post-September 11 terrorism response.

On September 10 of this year, the Washington Post graded critical infrastructure sectors, giving the chemical industry a D. Newsweek, which is owned by the same people, did a similar piece. They were even tougher. Newsweek gave the chemical industry an F. I have seen this repeatedly in a number of surveys of America's infrastructure.

While some companies may be doing everything they can, and I know there are some that are working very hard, they are concerned about it for security reasons and protecting their people and maybe themselves. But the fact is we need to do a lot more. We need to be a lot more certain the breadth of the industry is being attended to.

That is why in October 2001 I introduced the Chemical Security Act. That is why I worked with Senators on both sides of the aisle to move the bill through the EPW Committee. This is the hard part. Ultimately, the committee approved the legislation on a vote of 19-to-0. Not a single Senator voted no. I note Senator INHOFE did, in fairness, express concerns about the bill at markup and I agreed to continue to work with him on those issues afterwards, particularly so we could potentially add it as an amendment to homeland security.

In fact, as I suggested, I talked with other Members and we tried to keep the concerns of the bill, deal with them, and while I will not go through the post-markup negotiations, there were substantial revisions so it could get added to the bill. Unfortunately, we have not been able to get to conclusion in that process even though it was a 19-to-0 vote in committee for it. Sometimes I wonder whether special interests sometimes trump the people's interests.

I will not be offering my amendment; it is not germane. But I think we need to come back and go to work on this issue as soon, as forcefully, as possible. It is absolutely relevant to homeland security and protecting the American people. I know that is the case in New Jersey.

I will not go through it in detail, but the first thing we have to do is be very specific about identifying high priority chemical facilities. That can be done relatively straightforwardly. It will take cooperation between EPA and the new Homeland Security Department. There is some debate about that. We

need a list. It does not have to be published on the front page of the New York Times, but we need to understand what the exposures are and get about protecting the American people.

Second, we need to have audits of what that process is so there is a reality to what has been talked about. There is not a moral hazard saying we have done something and nothing really has occurred.

In a nutshell, that is what this is about. It is a little more complicated than that in detail, but I suggest this is something that really should be a priority when we return. I hope we do not face the stonewalling that has come up from some elements in the industry. The need to act is urgent. This is, by the way, consistent with some of the things other people who have looked at homeland security on a broader basis have talked about.

I will quote from a recent op-ed piece by Warren Rudman and Gary Hart, who have been following homeland security as effectively as any two Americans studying this. They have an op-ed page written in October of this year:

> America's corporate leaders must accept their new responsibilities to protect the privately owned critical infrastructure and cease the behind-the-scenes lobbying against measures requiring them to do so. If necessary, the President must deliver this message bluntly and directly.

Some of those things that were added in the middle of the night, the kind of experience that I have experienced with regard to trying to deal with chemical plant security, is indicative that that process of resisting, protecting the American people, is not fully embraced in the private sector.

I could not agree more. We need to work together as a Congress, with the administration, and deal with this issue.

Homeland security in general, time is of the essence, as someone said around here. It is not neutral. So I hope we can move very quickly on this. I am sorry we have not been able to deal with this. There are some good voluntary efforts with regard to chemical security. But I don't think we have gone far enough. Voluntary efforts alone are not going to be sufficient. We need to work in Congress to make it happen.

Finally, I am proud to be an author, a promoter, a sponsor of this legislation with regard to chemical plants. I am also proud to be a cosponsor of the Daschle amendment that will deal with some of these other special interests. I think the two relate in the sense that we are not all on the same page pushing forward to protect the American people on homeland security. We need to get there. With both the private sector and the public sector.

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.

Mr. REID. I ask unanimous consent that there be debate only on the matter now before the Senate until 3:30 today.

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

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

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

Mr. BYRD. Mr. President, if the Chair will bear with me momentarily.

Mr. President, over recent weeks as the President crisscrossed the Nation on campaign stops—campaign stop after campaign stop—he used a number of gimmicks, including this legislation, to rally support for his chosen candidates. He painted this bill as a panacea for the terrorist threats that plague us and challenged this Congress to pass this bill quickly.

On each occasion, as I followed the newspaper accounts of the President's stops during the campaign, the President left the impression among the public that this bill is urgently needed, and that it will make life safer for American families. But there was much he didn't say. Here is what the people can expect after the Congress approves this legislation to transfer 28 agencies and offices to a new Homeland Security Department.

Next February, the President will submit a plan—his plan—to the Congress about how he intends to transfer 28 agencies and offices into a massive new Department over the period of just 12 months. We don't know what is in the President's plan today, and we will not know what is in the President's plan when and if Congress passes this bill and it goes to the Chief Executive for his signature.

We will not know what is in the President's plan. After we have passed this bill and it becomes law, the President will then inform the Congress about how he intends to reorganize, consolidate, and streamline these 28 agencies as they are moved into the new Department. He will not seek approval of the Congress—the elected representatives of the people. He will not seek our approval. He will not need to because—according to the provisions of this bill on which we are being hurried and stampeded to act, according to the provisions of this bill—he will simply drop the plan in the laps of the committees so they can be informed about what he intends to do. He will not be asking for their approval. We will have already given our approval when we pass this bill.

I hope Senators understand that. When we pass this bill, we, the Congress, are out of it. The President will in due time submit his plan. In due time he will inform the Congress as to what he intends to do. He won't have to ask us if we approve of what he is going to do. We will have already said to him: Here it is. You submit your plan. According to the provisions of this bill, your plan will go into effect in due time. And we will not have any more to say about it.

He will simply drop the plan. It will not fall like manna from heaven, because it won't come from heaven. This is what we are authorizing the President to do when we adopt this bill that is before the Senate.

Here it is. Those who are watching this floor through the electronic lenses before us, here is the bill. It is made up of 484 pages. These pages are not like reading ''Robinson Crusoe'' or Milton's ''Paradise Lost.'' They are very difficult pages to understand. On only a single page there may be many references to various and sundry laws that are already on the statute books, so that in order to understand what may be on a single page, we have to go back, look at the references, and go back to those statutes that have been on the books—some of them—for many years or decades. We have to go back and see what those laws contain before we understand what is on a single written page. It is not like reading a novel. In some senses, it is made to sound like a fairy tale. But it is indeed not a fairy tale.

This is a bill that affects you—a bill that affects those two members of the staff back here who are talking. This is a bill that affects you. This is a bill that will affect you, each of you—you, you, you, you, each Senator. Each of those persons out there who are watching this debate—it is really not a debate. There is only one Senator talking here and one Senator listening and one Senator in the chair. So there are not too many Senators here. Hopefully, they are watching from their offices, as we all do.

This is the bill. Let me say it again: 484 pages of complicated material.

How long have we had it? A little over 48 hours. It came to us early in the morning on the day before yesterday. Today is Friday—early in the morning of Wednesday. There it is. There is the whole thing—the whole thing. I don't know what is in it. I know about some of the things that are in it. But no Senator in here knows everything that is in this bill. I daresay that. I would be happy for any Senator to stand on his feet and challenge me on that and say: Hold up here a minute; I know everything that is in it.

We are authorizing the President to submit this plan. He can do it without our subsequent approval. This legislation authorizes the President to reorganize, consolidate, or streamline these 28 agencies and offices any way he chooses—any way he, that one man, the President of the United States—as these various agencies are moved into the new Department.

All this legislation asks of the President of the United States is that he let us know what he has decided. That is not asking a lot from the Chief Executive of this country. That is all he needs to be concerned about. All he needs to be concerned about is to explain what he plans to do. Too late. I am sorry to say to any of you Senators that you can't do anything about this. You have already given him the approval. When you vote aye on this 484-page bill, you will have given the President the approval that he needs. You can be sorry for what you have done. You can crab about it and be cranky and wish you had not done it. But it is too late now.

You remember that old song: ''It is too late now.'' Well, it will be too late for any of us—too late.

We can weep and gnash our teeth—if we have any teeth left. And I happen to have my full set after 85 years. I have a full—I can't say quite a full set. But I have lost about I think four teeth in my lifetime of 85 years. These are real teeth. I can't take them out at night and scrub them, wash them, and put them in a big glass of water. I can't do that. They are real. They are real teeth. And they can bite, thank God. We didn't have all of this fancy medicine and all of these fancy health programs that the young people and children have today, with which mothers and fathers are blessed. We didn't have anything like that in those days.

So all I have is what the good Lord gave me through my mother's and father's genes. Well, that is all I have.

So here we are. I can gnash my teeth. They are real teeth. I can gnash those teeth. I seldom show them around here, but they are there. I can gnash my teeth, and complain all I want, and say I wish I had known—I wish I had known. Well, it is too late now. That will be the way it is.

He can move these agencies any way he chooses. All this legislation asks the President to do is: You please just tell us what your plan is. Will you do that? Please, just tell us what your plan is.

There are 1.8 million people in West Virginia whom I represent, and who are represented by my colleague, Senator ROCKEFELLER.

My people, my 1.8 million, would love to know what those plans are. But bless his name, the President does not have to tell us today. And we don't ask him. But we will get on our knees and fold our hands and say: Mr. President, will you just please tell us, when you are ready, what you plan to do? You can do it now. Here is the bill. We are passing it today, but just please tell us what you are going to do.

All this legislation asks is that the President let us know what he—he, the President of the United States. He will be with us 2 more years, maybe 6. Who knows. But anyhow, this man down here in the White House, one man out of 280 million, he will tell us what he plans to do.

A few months after we receive the President's proposal—after he is so generous to come up here and tell us what he plans to do—a few months after we receive his proposal, we will begin reading articles in newspapers and magazines. I am going to come back to the floor—the Lord willing, if He lets me live—I am going to come back on the floor and remind my colleagues; I am going to remind all these staff people around here: This is what I told you. I told you.

After we start reading all these articles in newspapers and magazines about special advisory committees—this is exactly what that Senator who is sitting in the Chair right now, the Senator from New Jersey, Mr. CORZINE, talked about this morning. He told us about it. He told us about these special advisory committees. And they will have been established, by the new Homeland Security Secretary, to make recommendations about certain homeland security-related issues.

Now, look at that. I hope Senators will go back and read today's RECORD or that of the first of the week about what Senator CORZINE had to say about this, yes, about certain homeland security-related issues.

Possibly, we will hear about an advisory committee being established—maybe we will see it in the Federal Registry, that an advisory committee has been established—to make recommendations about how the new Directorate of Information Analysis can look at our e-mail accounts. This will not be a laughing matter. I will tell you, this will not be a laughing matter.

Now, let me say that again. Possibly, we will hear about an advisory committee that has been established to make recommendations about how the new Directorate of Information Analysis can look at our e-mail accounts, can look at our banking transactions, can look at our telephone conversations, or can even look at our credit card transactions.

I don't have any credit cards. Let them look at mine. They can't look at my credit card transactions. I grew up the old-fashioned way. I pay for it as I get it. No credit card for ROBERT C. BYRD, or the Mrs. But to those who have credit cards, he can look at your credit card transactions to trace everything you purchase from butter to bullets. Welcome, Big Brother. How do you like that?

The American people will want to know, and will deserve to know, what recommendations are being made to the Homeland Security Secretary. The press will try to provide the public with answers. But under this bill, you can be sure that the press will not be allowed to access the minutes of those committee meetings. That is what we are making possible by the passage of this legislation. We are making it possible for the American public not to know what these special committees are considering. And the public will not be able to find out because this bill—this bill—here it is; 484 pages, new, never been in a committee, never seen the light of day in a committee meeting. There is no analysis of this bill that I know of from any departments here. There have been no witnesses appearing before Senate committees supporting this bill. Nobody had any committee markup that I know about. This bill just suddenly emerged out of the darkness on the morning of Wednesday, the evening of Tuesday night. There it was.

But that bill—that bill—will allow the new Secretary to exempt such advisory committees from the public disclosure laws that are on the books now that enable the press—the fourth estate—and the American public to find out what these advisory committees are doing.

This bill will allow the Secretary to drop a veil, to bring the curtain of secrecy down, to drop a veil of secrecy over these advisory committees and hide their work from the press—from the all-seeing eyes of the press—and from the public.

Do you want to vote for that? Is that what you Senators want to vote for? Is that what your constituents want you to vote for, Senators? I hope, if you are not hearing me now, that your staffs are listening. I hope, if you don't hear me, that somebody will show it to you in the RECORD on Monday morning what Senator CORZINE, the distinguished able Senator from New Jersey, who presides over this Senate at this moment, I hope they will read what he said and what I am saying here about these advisory committees and about what we are about to let happen. And here is the bill that will allow it to happen.

I hope you Senators who vote on this matter—probably one day next week—will have to answer to your constituents for that. I have been in this Congress 50 years, and I have cast many votes. I have cast more votes, than any Senator who ever lived, in the Senate of this Republic. And I just have to say, I have cast some votes that were critical votes, but I think that what we are doing in this bill, more than anything else I have voted on in my 50 years in Congress, is shifting power to an administration, shifting power to a President.

I would say this: God, so help me—and God could drop me in my tracks right here in this moment if I were not saying what I believe—I would say the same thing about this bill if it were a Democratic President in the White House.

I have no ax to grind. I am not on the payroll of any pharmaceutical company or any other company in this country. I am on the people's payroll right here in this Senate. That is it. So I have no ax to grind. I am just saying that if it were a Democratic President in the White House, I would be standing here today saying the very same thing. It isn't because the current President of the United States is a Republican. That is not it. But there is something about this Republican administration that is far different from

what I have seen in former Republican administrations. And I served under Republican administrations, beginning with the Eisenhower administration.

This is a different kind of administration. This is a bill that I will vote against regardless of who might be in the office of the President. This bill will allow the Secretary to drop a veil of secrecy over these advisory committees and hide their works from the press and the public.

So what we are doing when we vote next week on this bill, if we vote next week, what we are doing is putting our hands over our eyes, and we are saying the public has no right to know. We are taking away the public's right to know.

That is what we are about to do to you out there in the land, across the land, across the plateaus, the Plains, the mountains, the valleys. That is what we are saying to you. You may not catch us at it, but that is what we are doing to you. That is exactly what we are doing to your right to know.

Later in the year, the people may begin to read in the newspapers about start-up problems in this vast new Department. The papers will possibly report about a failure by the new Immigration Service to deny entry to a known terrorist because the relevant immigration officials were too preoccupied with moving their offices, reconnecting their computers, reinstalling their phones, or even changing the heading on their stationery to handle their primary responsibility; namely, protecting our borders.

This would bring about a clamoring of public disgust as agency officials are found to be too busy organizing their offices to properly handle their duties. Editorials will appear around the country remarking about the failures of the new Department, and the public very well may have reason to lose trust in that Department.

These kinds of high-profile debacles could carry over to the Transportation Security Administration, the Customs Service, FEMA, the Coast Guard, or any of the 28 agencies and offices and 170,000 employees being transferred to the new Department. Senators may well read a few months from now about Federal workforces in their home States and the jobs of Federal employees being privatized under the labor rules included in this bill.

Don't say that you were not warned, I say to my colleagues. Don't say that you were not warned.

The Washington Post reported today that the administration plans to open as many as 850,000 Federal jobs to private contractors. Have you read it? If you haven't, go to today's Washington Post. Look for that story. It is there. Read it with your own eyes, and you will believe it. What a nice plum that is for the big business friends of the administration. How about that? What a shortsighted, ill-conceived political gimmick it is. What a hoax it is to play on the taxpayers.

Privatization has nothing whatsoever to do with improving security. Look at the private security firms that were in charge at some of our Nation's largest airports on September 11. Remember reading about these in the newspaper? Go back and look at some of those old newspapers. Is more of that what this administration really wants? I ask, is more of that what this administration really wants?

The Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date.

Now, imagine that. The Wall Street Journal. Hear me now. Paul Revere awakened Concord. I would like to be able to awaken this Senate and the other body. Do you suppose I could do that? Paul Revere did that. He was able to awaken Concord. Get out of your beds; the redcoats are coming.

Let me say that again. The Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date.

How many of our Senators today voted for cloture? If Senators had read the Wall Street Journal, the editorial today about the fallacy of pushing this bill through at such a late date, would the Senators who voted yes—and I implored and I importuned and I urged, which I seldom do, I urged Senators right there in front of that desk, that table in the well of the Senate. There were several Senators I urged: Please don't vote for cloture today. You can vote for it next week perhaps, but don't vote today. Let's take a little more time and study this bill.

The answer I got: Well, you have the weekend. You have 30 hours. You have 30 hours; isn't that enough?

Do we have? No. We have already been told by the minority: You won't be able to offer any more amendments.

The only amendment that is going to be offered is the amendment that has been offered by the majority leader, Mr. DASCHLE, that amendment on behalf of Senator LIEBERMAN, and I added my name to it afterwards, when I saw what was going on. So there it is, the Daschle-Lieberman-Byrd amendment.

But we are told by the current minority—soon to be the majority—that you can't offer any more amendments. That is the only amendment we are going to let you offer.

So how about that cloture now? I was told by some of my colleagues on this side of the aisle: Well, you have the whole weekend. You can study.

Who saw this thing coming? Who saw the situation coming in which we would offer one amendment and we are told by our Republican friends, that is it, no more; that is the only amendment that will be offered?

So what about it now, my colleagues who reminded me that we have this weekend? Even under cloture, we have this weekend.

I said to one of the Senators who said that to me: I wasn't born yesterday. I am not a new kid on the street here. I have been in this Congress 50 years. I know a little something. I have learned a little something about the rules of the Senate, and so forth.

But here we are, one amendment. That is all.

We are not going to be allowed to have any other votes on amendments, except that one. ''You have 30 hours,'' I was told by Senators down in the well there. ''Well, you have 30 hours; you have the weekend, and your staff has the weekend. You have 30 hours.''

I have several amendments I would like to offer, but I cannot do it. The tree is filled. Remember the tree at the Garden of Eden? It is the first thing you read about in the Bible. The greatest scientific treatise ever written is that first chapter of Genesis. That will tell you more about science than many scientists today can tell you. It tells you the order of things in which they were created. The scientists of today will tell you that is the correct chronological order. Go back and read that first chapter of Genesis and you will read the chronological order of creation, and that was written thousands of years ago. What a piece of science that is.

I have three grandsons, two of whom are physicists. I have a son-in-law who is a physicist. I have a grandson who married a physicist. So we have lots of physicists, lots of scientists in my family. But before all those scientists came into being, the greatest scientific treatise ever written had been written right there in the Book of Genesis. We have no reason to stay dumb about how creation went forward. It is right there.

Anyhow, there it is for us. So here the Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date. Here were these great Senators who stood up there in my face and two or three of them told me, ''Well, you have this weekend, you have 30 hours,'' as though I didn't know that. How many Senators would like to tell me that? One or two of them did. I did say to one that this is not a new kid on the block. I know about that 30 hours.

Now look at what we have. I cannot offer an amendment, even though we have 30 hours. The tree is filled. But it is not that tree in the Garden of Eden. That is the tree of knowledge and we all can continue to learn. But I cannot offer an amendment. Our Republican friends would say you can go this far but no farther. You have an amendment pending, but that's all. That is the only amendment you are going to have to vote on before that 30 hours is up.

How do you like being given that kind of medicine? That is what we have to deal with here. Here is what the Wall Street Journal said. Get this:

> There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January.

That reminds me of the distinguished Senator from Texas. I love him in many ways, and I agree with him on

occasion. He stood right here today and said, ''This bill is the best you will get. How many in here are willing to believe that by putting this over another 3 months they can get a better bill?'' I said, ''I do.'' But that was his position, that this is the best bill you are likely to get. Do I think we will get a better bill after 3 months in a new Congress? Yes, I do. But that was his question.

I don't need to answer that. Let the Wall Street Journal answer that question. Do you think you can get a better bill if you wait 3 months? That is the question.

The first question that was ever asked was asked by God as He went into the Garden of Eden and started looking for Adam—Adam and Eve in that garden. God was walking in the cool of the day and he was looking for Adam in that paradise setting. How lovely that must have been. Here is old Adam over here somewhere under a tree, or back in the bushes, with some figleaves hiding from God. God said: ''Adam, where art thou?'' That was the first question ever asked.

The people are going to say to us: Senator, where were you? Those Senators who voted for cloture, God love them—and I love them and I respect their viewpoints. They have a right to cast the votes they want to cast them. I don't like to tell them how to vote. But let my constituents say: Robert, where were you? Where were you when you cast that vote?

So here is what the Wall Street Journal would say:

> There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January.

Hallelujah. Thank God for the Wall Street Journal. They answer the question well—better than I.

> There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January. That includes President Bush's priority of a new Department of Homeland Security . . . the proposal is mostly about rearranging the bureaucratic furniture . . . And as with any bill whipped through this quickly, we can expect to learn later about many bad ideas that deserved more scrutiny.

Mr. President, at a later moment, I will ask unanimous consent that the entire editorial be printed in the RECORD but not at this point. I suspect it won't be long before we begin to hear about the bad ideas that deserved more scrutiny.

Some Senators may find comfort in the fact that this bill has been touted as a compromise. It won't compare with the great compromise of July 16, 1787, which created this Senate. If it had not been for that compromise, you would not be here today, Mr. President. You would not be presiding over a Senate of equals, regardless of the size of your State, or the size of its population; you would not be in a Senate in which two Senators from the smallest State would have the same strength, as to their vote, as two Senators from the largest State in the Union. I would not be here. The Senator from New Hampshire would not be here. The Senator who is the minority leader from Mississippi would not be here. The Senator who is the majority leader, the Senator from South Dakota, would not be here. All of these pages, they would not be here. No, this would not be the Senate. But it is that Constitution—here it is; I hold it in my hand. Senators should, above all people, become more acquainted with this Constitution.

Some Senators may find comfort in the fact that this bill has been touted as a compromise. I don't know who this bill was a compromise between, other than the White House and the congressional Republicans, who already supported some version of the President's original plan.

Call me old-fashioned. Yes, there he is, there is that old-fashioned guy. I am married to an old-fashioned sweetheart. Thank God for her. She has been my sweetheart now for 65 years and going on quickly to the 66th. Thank God for that kind of an old-fashioned sweetheart. I hope she thinks the same thing about her old-fashioned husband—ha, ha, ha, that old-fashioned guy. That is the man. He has been around 85 years—an old-fashioned guy.

I remember a time, Mr. President, when compromises were crafted by individuals who had differing views on an issue. This kind of compromise, this 484 pages—let me make sure I am right. Yes, it is 484 difficult, complicated, hard-to-read, harder-to-understand pages. There it is. This kind of compromise is like legislative shadow boxing.

Have you ever tried boxing? I tried it, and I got knocked on my anterior. That was the end of my boxing. I found I was not so good at boxing. This kind of compromise here is like some kind of shadow boxing. It would be laughable if it were not so serious. This kind of compromise is like legislative shadow boxing—punching and jabbing and sparring with absent opponents. The opponents are not there.

This ephemeral compromise makes no concessions with regard to the President's efforts to exempt this new Department from public disclosure law, such as the Federal Advisory Committee Act. You will not find that spelled out, but you will find reference is made to it. You have to go beyond the plain print in section 871. You have to go beyond the plain print. It is referenced there, but you have to go back to the statute books to see what they are talking about.

This ephemeral compromise makes no concessions with regard to the President's efforts to exempt the new Department from public disclosure laws, such as the Federal Advisory Committee Act. It includes no concessions with regard to the President's reorganizing the 28 agencies and offices being transferred to this new Department without congressional approval.

I have never seen anything like it. In 50 years in Congress, I have never seen anything like it—never. All this without congressional approval. It includes only token concessions to those who have substantive, genuine reservations about this bill with regard to the civil service and collective bargaining issues. How can we pretend that this amendment is a serious attempt at a compromise when it is only an agreement between the President and the few supporters of the President's bill?

Oh, there are compromises in this. Yes, there are compromises in this amendment. It compromises the rights of Federal workers. It compromises the civil liberties of the American people out there. It compromises your daddies' and mothers' civil liberties, the parents of these nice pages we have here.

They are just the most wonderful people. They come here seeking to understand the legislative process. What are they getting? They are not getting the legislative process in this monstrosity. They are not getting the legislative process. These—I said kids; these are young people. They are all juniors in high school. They are at that tender age where they learn quickly. They have come here wanting to learn the legislative process. They are being cheated. I say to you young fine pages here, I love you.

From time to time, I meet out in the corridor with the pages, Republicans and Democrats. I tell them good stories, I mean wholesome stories. That is right. They are wholesome stories. I tell them stories in which there is a moral lesson. I tell them the story of the house with the golden windows. I tell them the story written by that great Russian, Tolstoy, ''How Much Land Does A Man Need?'' I tell them the story about ''Acres of Diamonds'' that was told, I understand, 5,000 times by that great Chautauqua speaker, Russell Conwell.

I tell these pages good stories, wholesome stories. I talk about the Bible. I talk about Milton. I talk about the Constitution. I talk about history. I talk about Nathan Hale to these young people here. Bless their hearts. I always am inspired when I talk to these young people. These are the cream of the crop. Mind you, there are millions across this country just like these. But they are being fooled. We are fooling these young people.

They come here to learn the legislative process. What do they get from this bill? This is not the legislative process. They do not learn in this amendment. They will go back one day and they will say: I heard Senator BYRD say that was not how our laws are made. No. We short circuited that process on this amendment, this 484-page bill. Here it is, 484 pages. What is in it? Don't ask me. I know a few things that are in it, and I have heard other Senators talk about a few things that were left out of it in the darkness of the night.

We talk about compromise. This 484-page monstrosity compromises the civil liberties of the American public.

It compromises the constitutional doctrines of the separation of powers and checks and balances that we find in the Constitution, which I hold in my hand.

This bill compromises the notion that the Senate should debate and amend legislation and act as the greatest deliberative body in the world before passing massive—massive—reorganizations of the Federal Government.

Mr. President, we have allowed ourselves to be stampeded, and I could be as King Canute. A lot of King Canute's followers thought he could do anything. He thought he would disabuse his followers of that fallacy, that belief that King Canute could do anything. So he went down to the sands of the oceanside, and he commanded the waves to be still. The waves were not still. They did not go still, so the people finally understood that King Canute could speak to the ocean and it would not necessarily heed him.

I say that to say this, Mr. President: I might as well speak to the ocean. I might as well be like King Canute as to speak to some of my colleagues here. My speech would fall upon deaf ears, and they would say: There he goes again, that old-fashioned guy who believes that we ought to take the time; there he goes again.

We have allowed ourselves to be stampeded into passing this bill. Afraid to be on the wrong side of this issue, we hear cries from both sides of the aisle that we must support our President. We hear cries of, ''My President,'' ''My party,'' ''My Commander in Chief.'' When will we hear, Mr. President, ''My country''? When will we hear, ''My country''?

Senators are obviously upset about the miscellaneous provisions that were included in this bill at the last minute. The Washington Post this morning outlined a number of these provisions ranging from language that would help the FBI obtain customer information from Internet service providers to language incorporated in the bill by the House Republican leadership that gives Texas A&M—I do not believe it mentioned Texas A&M—that gives Texas A&M the inside track in hosting the first university center on homeland security to be established within 1 year.

It will not say that in the bill. Senators will not find that in the bill.

But the language in the bill is so targeted only that one—at least that one institution would be most favored over others.

Probably the most egregious provision inserted is a White House-backed provision designed to head off dozens of potential lawsuits against Eli Lilly and Company and other pharmaceutical giants that are being sued by parents who have linked their children's autism to those companies' childhood vaccines.

How about that? I ask the distinguished Members of the other body. How do they feel about having passed this bill with that kind of language in it? Hear me over there at the other end of the Capitol. Yes, explain your vote, explain your vote to your constituents. You, back there in the other—we are not supposed to refer to the other body in our speeches, but the other body passed this bill in a hurry.

Those in the other body who voted for this, go back and look at what you voted for.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. SARBANES. Will the Senator yield to me on my time for a few questions?

Mr. BYRD. Yes, I will be glad to yield.

Mr. SARBANES. May I have this counted against my time under cloture?

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

Mr. SARBANES. I ask the distinguished Senator from West Virginia: In July, the Brookings Institution issued a report concerning this reorganization, and they said the following, and I am quoting from them now:

> Any fundamental reorganization represents a huge managerial undertaking, one that becomes ever more daunting as the number of agencies to be included increases. The danger is that top managers will be preoccupied for months, if not years, with getting the reorganization right, thus giving insufficient attention to their real job, taking concrete action to counter the terrorist threat at home.

This Brookings report advocated some consolidation of agencies, but it proposed a much smaller, more streamlined consolidation, and the report went on to say: ''Reorganization is not a panacea. In fact, there is a risk that reorganization could interfere with, rather than enhance, homeland security tasks.'' Certainly, changes should be made only when there is a compelling case that consolidation offers clear benefits.

I supported a proposal—and this leads up to my question—that the Senator from West Virginia offered earlier in the consideration of this issue, which would have undertaken to do a reorganization, but would have phased it and would have brought it back at periodic times for further scrutiny, examination, and implementation by the Congress. Was that the approach which the Senator had taken?

Mr. BYRD. Yes, it was. Mr. President, if I may respond to the distinguished Senator. The amendment I offered to the legislation that was being proposed by Mr. LIEBERMAN in his committee, the language I offered with several cosponsors and supporters, such as the distinguished Senator from Maryland, Mr. SARBANES, would have provided for the recommendations of the administration to come back to the Congress periodically—every 4 months, for the next 12 months—which recommendations would have to do with the phasing in of the various and sundry agencies, a few at a time, three times, every 120 days. Some of the agencies would be phased in.

Those recommendations would come back to the Congress and would go to the appropriate committees having jurisdiction—in this case it would be Mr. LIEBERMAN's committee and his committee's counterpart in the House of Representatives—and expedited procedures would require that committee to act to bring out a bill implementing those recommendations, or amending them or changing them. Then the Senate, under expedited procedures, would proceed to call up that bill and pass it. That would be done three times.

So the amendment which the distinguished Senator from Maryland refers to would provide for a phased-in approach over the same period of time that is going to be utilized by the President and the Secretary under this bill—namely, 12 months—and over that same period of time a phased-in approach with Congress still in the mix. Congress would still have a say at each of these three junctures.

Mr. SARBANES. It seems to me that this is a far more sensible way to proceed. First, I think it maintains a better balance with respect to the roles of the executive and the legislative branches of our Government. I think the Senator has been absolutely right to underscore the fact that what is at stake here is a tremendous grant of authority to the executive branch.

Mr. BYRD. Tremendous.

Mr. SARBANES. It is sweeping in its dimension.

Mr. BYRD. Sweeping.

Mr. SARBANES. Secondly, I think that review process is more likely, far more likely, to produce beneficial results, because as the Senator said earlier today, the more scrutiny and discussion you have, the higher the likelihood—not a guarantee, but the higher the likelihood—that you will have a better result.

As I have listened to the Senator over these weeks of the debate, I have increasingly come to have very deep concerns about what we are doing with this legislation. I feel for the Senator when he says people are not—even now, as we near the last hour, focusing fully on the implications and the consequences of what we are discussing.

Back in September, the Baltimore Sun published an editorial, and I want to read a couple of paragraphs from it. This is from September 23 of this year:

> Months of debate have made clear that this bureaucratic boondoggle offers no promise of making the homeland more secure. Worse, it takes the focus off the need for tighter oversight of the Nation's security systems. President Bush offered the most sweeping government reorganization in a half a century, largely as a political and public relations tactic. He was trying to counter Senate Democrats who were advancing similar legislation of their own. He timed the unveiling of his plan to drown out the testimony of FBI Agent Coleen Rowley, who was blowing the whistle on the security failures of her hidebound agency that blinded it to the clues of the September 11 attacks. Shifting 22 Federal agencies and 170,000 workers into a new department will cost billions but will do nothing to solve the problems agent Rowley

addressed. What is needed is greater sharing, coordination and synthesis of the security information collected by the myriad agencies. But this new department will not even include the FBI and the CIA which are the two premier intelligence gatherers. Nor is there any guarantee that greater sharing would take place between them if they were together.

I think this is right on point and parallels much of what the Senator, as I understand it, has been arguing.

Mr. BYRD. Mr. President, before I respond to the distinguished Senator from Maryland, I understand that the able Senator from Hawaii, Mr. AKAKA, has a unanimous consent request he would like to make. Will the Senator from Maryland yield for that request since this is on his time?

Mr. SARBANES. Certainly.

Mr. AKAKA. I thank the Senator from West Virginia and the Senator from Maryland for yielding to me.

Mr. President, I ask unanimous consent that my hour under cloture be yielded to Senator BYRD.

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

Mr. BYRD. Mr. President, I thank the distinguished Senator from Hawaii, Mr. AKAKA, who is about to take the chair. He wanted to make the request before he took the chair.

Mr. REID. Mr. President, I ask unanimous consent that the order now in effect, that there be debate only until 3:30, be extended until 5 o'clock today.

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

Mr. BYRD. On the time of the distinguished Senator, let me be just a little bit loquacious in my response. I have served in this Senate for 44 years and in the Congress for 50 years. In my time in the Senate and in the House, the Senator from Maryland—I don't have to say this; I don't owe the distinguished Senator from Maryland the tribute I am about to say, except it is honest and he is entitled to it.

We often pass around our warm words of praise because we are Senators and this is a happy family here. I admire this son of ancient Greece. He is a son of Athens. He is American. He grew up in this country. His parents came to this country. He knows what being an immigrants means. He is a Rhodes scholar. I can't say that about ROBERT BYRD. But this man from Maryland is a Rhodes scholar. He is a true son of Athens, a son of the people whom Socrates, Sophocles, and Plato were a part. He is one of the most thoughtful Senators I have ever seen.

When I was majority leader and when I was minority leader—thank Heavens, thank Heavens that experience is in the background now; it is long past—but when I was the leader duly elected by my colleagues, I always had meetings in which I tried to get from the most brilliant, most thoughtful Senators on my side of the aisle, their thoughts, their opinion, their advice as to this or that issue, whatever issue might be before the Senate or about to come before the Senate. PAUL SARBANES was one who was always there. He was never out of the room. Not because he was the ''yes'' American. He wasn't, by any means. But I knew I would get the real stuff from PAUL SARBANES.

Here is a man who is head and shoulders above some Senators with whom I have served, and I have served with a great many Senators. This man is a true thinker. We have seen the picture of The Thinker. This is the thinker, PAUL SARBANES.

A little while ago he said something which brought to my mind the words of William Wordsworth who said: No matter how high you may be in your department, you are still responsible for the actions of the lowliest clerk in your department.

I forget now what the Senator said, but it brought that thought to mind. We are talking about 28 agencies. Who is going to be responsible for the lowliest clerk's actions in this conglomeration, the epitome of chaos that will occur?

I thank the distinguished Senator from Maryland. Please, if he has something further I will sit down at any moment. If he has anything further of me, I will be glad to respond.

(Mr. AKAKA assumed the Chair.)

Mr. SARBANES. First, Mr. President, I appreciate the generous and gracious remarks of the distinguished Senator from West Virginia. I must say that with all of my schooling he mentioned, I have learned more from him than at any other point along the way. I am extremely appreciative to him for that.

I did want to cite this quote that the Senator has used in the course of this debate, which is so appropriate to our situation, from the Roman poet and the adviser to Nero, Gaius Petronious Arbiter. It is another instant in which the Senator has enlightened this institution through his use of Roman history. The quote could not be more on point. It is written as though it were written for the current situation. It is as follows:

> We trained hard, but it seemed that every time we were beginning to form into teams, we would be reorganized.
>
> I was to learn later in life that we tend to meet any new situation by reorganizing, and the wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

We could not have a more appropriate quote to the situation that we are confronting today.

If the Senator would indulge me for just a couple of minutes, I tie in with the demoralization, confusion, and inefficiency what this legislation is doing to loyal, dedicated, hard-working, committed Federal employees. I am very frank to say taking from our employees rights that they now have, which this legislation will do on the grounds of flexibility to enhance homeland security, will do just the contrary. It will deal a blow to homeland security. We are talking about dedicated employees who are serving our country. They have been involved in protecting homeland security. They are loyal and committed workers. We want them to go on providing our high level of service, yet this legislation does not protect longstanding rights to bargain collectively about issues of importance, nor does it retain important civil service protections which have been worked out over a very long period of time.

The Federal employees in this new Department, all of whom are already working to protect our national security, ought to have the same rights and protections they heretofore have had. Taking these rights away, cutting them down, will undercut the morale of these employees. We will get lesser performance, although I think these are very dedicated people. In contrast, if we protect our workforce, our workforce will protect us.

Let me turn it around the other way. Our federal employees have been protecting us. Why should we withdraw from them important employee protections? Many of these protections came into being in order to protect whistleblowers who are trying to do a better job, to eliminate cronyism or favoritism or unfair labor practices. Some say that membership in unions by employees in the Homeland Department will impede efforts to protect our national security. I find this difficult to understand. There are currently 200,000 union employees—employees who have a union affiliation—at the Department of Defense. Many of those employees have high-level security clearances. This never seemed to impair our national security during the cold war. Many of the first responders on September 11 were union members. Their membership in unions in no way hindered their remarkable displays of bravery. They were thinking only of their duty to their country.

Many agencies that already protect homeland security have union members amongst their ranks: The Border Patrol, the Customs Service, the Federal Emergency Management Agency, to name just a few. These employees are already doing their job well. Are they to be rewarded by stripping them of these union protections, of these civil service rights?

We have spent a long part of our history working out these employee rights, and they are important to the success of the Government and to the attraction and retention of the best possible Federal employees. We ought not to be diminishing these rights and protections, as this legislation does.

I think that stripping the employees of these protections will harm national security rather than help it. That is a subissue within the larger issue on which the Senator from West Virginia has been focusing, about the dislocation that is going to be created by this sweeping proposal, the one that brings us back, of course, to this wonderful quote from Gaius Petronius Arbiter.

I urge my colleagues to reexamine this closely. I know this issue has now

been politicized. No one is against homeland security. No one is against enhancing the security that our people feel, and protecting it. The question then becomes, what is the best way to do it?

We have had studies on this point. The Brookings Institute made a very careful evaluation. They said they thought some consolidation was in order, but they thought it should be limited, it should be done carefully, it should be done thoughtfully, it should be done with prudence. They pointed out, of course, that it is a huge managerial undertaking; that it becomes more daunting as the number of agencies to be included increases. And then last summer they said in their report:

> The danger is top managers will be preoccupied for months if not years with getting the reorganization right, thus giving insufficient attention to their real job, taking concrete action to counter the terrorist threat at home.

I think that is absolutely on point and it is a point which the able Senator from West Virginia has made repeatedly, of course, during this debate. It really tracks what Gaius Petronius Arbiter said, when he said:

> I was to learn later in life that we tend to meet any new situation by reorganizing, and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

Mr. BYRD. Hear, hear, hear.

Mr. SARBANES. And that is exactly what we are confronted with here.

Mr. President, I thank the Senator for yielding, and I yield the floor.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his contribution today, and for his references to the ancient Roman, Gaius Petronius Arbiter, whom the Senator from Maryland more than once has quoted on this floor. I thank the Senator for his defense of the patriotic Federal employees who work day and night to protect us.

Mr. President, we will not have one whit more protection with the passage of this 484 pages, not one whit protection more than we have now. The same people who will protect us at the borders, at the ports, at the airports and throughout the land at the ports of entry, the same people who will protect us then are out there now. They are there day and night protecting us.

So I thank the distinguished Senator from Maryland.

Mr. President, continuing my statement, and I will not be overly long, probably the most egregious provision inserted is a White House-backed provision designed to head off dozens of potential lawsuits against Eli Lilly and Company and other pharmaceutical giants that are being sued by parents who have linked their children's autism to those companies' childhood vaccines. The language would keep the lawsuits out of State courts, ruling out huge judgments and lengthy litigation and, instead, channel complaints to a Federal program set up to provide liability protection for vaccine manufacturers. The program, funded through a surcharge on vaccines, compensates persons injured by such vaccines to a maximum of $250,000.

A number of Senators, including the very distinguished Senator from Michigan, Ms. STABENOW, strongly criticized these provisions yesterday. And yet at the same time, some Senators who have made these statements—not the Senator whose name I have expressed just now—but some Senators at the same time have pledged to vote in favor of this bill, regardless of whether these provisions are included or removed. How about that. We are acting as though this is a conference report that cannot be amended, as though its passage is a fait accompli. We still have the opportunity to amend this bill, except for the fact that our Republican friends on the other side of the aisle have said: This far and no further. We have got an amendment pending in the tree and that is all you will get. You will get a vote on that amendment—up or down on or in relation to it, I suppose, at the end of the 30 hours—but no more amendments. That is it. That is the only amendment.

Well, we will see about that.

We still have the opportunity to amend the bill, at least the basic bill, H.R. 5005, even postcloture. So this amendment introduced by Senator DASCHLE will strike language in this bill which the Senate has not previously considered, the language that would allow the Homeland Security Secretary to establish advisory committees within the Homeland Security Department and to exempt these committees from the Federal Advisory Committee Act.

When I saw that in the amendment that the leader was introducing on behalf of Mr. LIEBERMAN—I saw that in the amendment, and I immediately wanted my name attached because I have been complaining, I have been criticizing that, complaining about that language in the bill.

This statute which has been on the books, the Federal Advisory Committee Act, which has been on the books for 30 years, ensures that the ad hoc committees used to craft policy in the executive branch provide objective advice that is accessible to the public. These public disclosure rules allow Congress and the media and groups outside of Government to know how the executive branch is making important policy decisions.

Section 871 of this new substitute we have just been given, less than 60 hours ago, provides the Secretary of Homeland Security blanket authority to exempt all advisory committees in the Department from existing public disclosure rules. This provision was not included in Senator LIEBERMAN's substitute, but it has been slipped into this new bill, which was made available to us, as I say, less than 60 hours ago, with the hope that Senators will not have enough time to scrutinize this dramatic change to existing statute.

Many of the advisory committees in this new Homeland Security Department will be dealing with issues of national security that should not be subjected to public disclosure rules. But the Federal Advisory Committee Act already allows the President to exempt these public disclosure rules for advisory committee for national security reasons. This is authority that the President has used for 30 years, and authority he will be able to use for advisory committees in the Homeland Security Department.

But instead of relying on the President's current authority to exempt committees on a case-by-case basis, the new language in this bill allows the Secretary to exempt ANY advisory committee from public disclosure rules, regardless of whether national security is pertinent or not.

This new blanket authority is not necessary. As a matter of fact, we ought not have it. It shouldn't be that way because it interferes with the people's right to know, and it is a danger to our liberty. It is a danger to our constitutional system.

The provisions in this bill allow the Secretary to use ad hoc advisory committees to craft policy in secret, without making specific findings that such secrecy is necessary in any particular instance.

The press, I hope, will read this bill and understand this bill. I hope the press is fully aware of how this presents a danger and a threat to the media's efforts to probe, to ask questions, and to scrutinize and to protect the public's right to know.

This unnecessary new blanket authority will give the President carte blanche to respond and expand the culture of secrecy that now permeates this White House—this administration.

Let me say that again.

This unnecessary new blanket authority can be used to give the President carte blanche to expand the culture of secrecy that now permeates this White House—this administration.

The public disclosure exemptions in this bill are a license for abuse. They are a danger. They are un-American. They should not become law.

I hope that Senators, before they cast their vote on the passage of this bill, will think about this. I hope they will be prepared to answer the public—their constituents—in the next election, whatever election down the road awaits them. I hope they will be prepared. There are going to be stories in the press as time goes on, I would wager, about this particular authority that the Senate will extend with passage of this bill to this administration and to this new Department—to the Secretary of this new Department.

We see on the front page of the Washington Times today—I have already mentioned the Wall Street Journal, and I mentioned the Washington Post. Now I call attention to the front page of the Washington Times this morning. There is a headline which reads

''Homeland Bill a Supersnoop's Dream.''

There are many dreams to which we can allude—Jacob's dream—the dreams.

''Homeland Bill a Supersnoop's Dream.''

In yesterday's New York Times, William Safire warned that if this homeland security legislation is passed as it is currently written, the Federal Government may be planning to use its new intelligence authority to compile computerized dossiers on every American citizen, including ''every piece of information that government has about you . . . ''

—every piece of information that the Government has about you, each of you, about you, about you, about you—

. . . including ''every piece of information that government has about you—passport applications, driver's license, bridge toll records, judicial and divorce records, complaints from nosy neighbors to the FBI, your lifetime paper trail . . . ''

That is a long trail.

. . . ''your lifetime paper trail plus the latest hidden camera surveillance.''

No one knows about those hidden cameras and where they are.

They may be looking at you. Who knows. They may be in your office looking at you.

Do we need to add to all of this by providing even more authority for the Federal Government to hide decisions behind locked doors—decisions which affect the safety of every man, woman, and child in this Nation?

Exampting these committees from the Federal Advisory Committee Act also removes requirements that the advice of these committees be objective and that the membership of the committees represent balanced viewpoints on the issues. With this new authority, the Secretary will not have to make any effort whatsoever to ensure the integrity and objectivity of these committees.

The language in this bill—here it is—484 pages. It wasn't around a week ago today. Nobody saw one page a week ago today. This bill didn't exist a week ago today.

The language in this bill even exempts individual members of advisory committees from financial conflict-of-interest rules. We should not allow our homeland security policies to be crafted by corporate advisors with a financial interest in those policies. This bill should not become a vehicle for lining the pockets of corporate fat cats.

Section 232 of the new bill also exempts advisory committees within the Office of Science and Technology in the Justice Department. This means that this new office, which will serve as the focal point for developing law enforcement technology, may rely on advisory committees whose members have a personal stake in the policy recommendations adopted by the committees. I am worried that exempting this new Science and Technology Office will allow the administration to provide special treatment for corporate campaign contributions who are pushing new anti-terrorism technologies.

It worries me that issues as important as homeland security and the safety of the American people may be decided in secret by ad hoc committees that are exempt from traditional good government laws. Under this language, the Secretary will be able to exempt not only new advisory committees, but also existing committees that are transferred into the Department along with these 28 agencies and offices.

This amendment, which I have cosponsored, will strike this exemption authority from the bill.

This dangerous new authority should not be slipped under the cover of darkness, as it were, into legislation that Senators have had little time to study or amend. If the Secretary of the new Department of Homeland Security needs this blanket authority, let him come to Congress and make his case. Congress must not hand over blanket authority to this administration which would allow it to cloak decisions in secrecy.

Now, Senators, this is what we are about to vote on, this bill. Now, if the amendment fails, Senators should not then go ahead and vote for this bill. If this amendment to strike these provisions fails to be adopted, Senators have no right then to go home and say: Well, I voted for the amendment. I was for that, but it failed and I, therefore, went ahead and voted for this bill.

What a crappy bill. Don't hide behind your vote when you vote on this amendment or you vote in relation to it or whatever the vote is when it comes. Don't hide behind that. If that amendment fails, don't hide behind that and say: Well, I voted for the amendment, and so I tried to get it in there, but the Senate voted it down, so I went ahead and voted for the bill. Shame on you. And your constituents should say so: Shame on you. Now, you say you voted for the amendment, and that the Senate didn't adopt it. Your convictions were not very strong, so you went ahead and voted for the bill, then, after that amendment failed. Shame on you.

Mr. President, I don't know of any measure that has ever come before the Senate in connection with which I have spoken more passionately, with greater conviction, than I have in regard to this bill. I have no special ax to grind. No, I have no special ax to grind. I am on nobody's payroll except the people's.

I am concerned about this. I am more concerned about this bill than I believe any bill I have ever voted on or will ever have voted on. And I have cast more votes than any Senator in the history of this Republic.

I have no special ax to grind. You say: Well, he's 85. He won't be running again. Don't bet on it. Don't bet on it. That is a matter for the Good Lord to determine and the people of the State of West Virginia. So don't count me out. There are those who may say: Don't count me in. I believe there is a song to that effect: ''Don't Count Me In.'' But don't count me out.

That is my belief.

This dramatic reduction of transparency should not be clandestinely slipped into this eleventh-hour legislation, and the Senate should not allow such a dangerous provision to be rushed through this Chamber during the final minutes of this Congress.

So shame on you if you vote for this amendment, and then, if it fails, you turn around and vote for this 484-page bill. Don't use that as an excuse when you go back to your constituents.

Every Senator has the right to do what he thinks best, but, believe you me, your constituents, if you vote for this bill—if that amendment fails, and you still vote for this bill, I hope you won't try to hide behind your vote for the amendment that is before the Senate: Oh, I voted for that amendment, but the Senate rejected it, so I then felt that I had done my best, and I went ahead and voted for the bill. Shame on you.

This administration has worked hard to keep the Congress out of the loop. The President has sought to isolate himself from the American public and their Representatives in Congress. He has asked for the Congress to provide him with broad statutory powers to further block congressional involvement.

That is what this bill will do. Pass this bill, and you will say to the President: Well, I don't know what your plan is—you have not told us what your plan is—but we have approved it. Here it is. Here is the bill. So you have the next 12 months in which to determine your plan, and all you need to do—we hope you will tell us about it. The language here provides for the President ''informing'' the Congress about the plan.

Well, in some cases, Senators have supported the President on these issues, either to show unity with the leader of their party or because they fear political attacks if they do not. Less and less, it seems to me, do we think about these grants of power that will affect the constitutional checks and balances and separation of powers that protect the constitutional freedoms of our country.

I must say this, that the shelf life of appreciation one might expect from this administration, in having supported it—those of us, may I say, on this side of the aisle, in particular—the shelf life of appreciation from this administration for your efforts to curry favor with the administration, if that is what it is, is very short indeed.

We saw that in the case of the distinguished Senator from Georgia, Mr. CLELAND. We saw that in the case of the distinguished Senator from Missouri, Mrs. CARNAHAN. We have seen it in the cases of other Senators who supported the administration. They did

what they thought was right. But in any event, their votes were in support of the administration on various issues—the tax cut, the Iraq war resolution, whatever it might have been—and yet, the President, himself, went into those very States and campaigned against those Senators. So this administration's thanks don't go very far, may I say to Senators.

So the best thing to do, as always, is to do your best, vote your convictions, and stand by your people who send you here, and stand by the Constitution.

Henry Clay, as a Senator from Kentucky in 1833, in building the case for the censure of President Andrew Jackson, asked the Senate:

> How often have we, Senators, felt that the check of the Senate, instead of being, as the Constitution intended, a salutary control, was an idle ceremony . . . We have established a system, in which power has been most carefully separated and distributed between three separate and independent departments. We have been told a thousand times, and all experience assures us, that such a division is indispensable to the existence and preservation of freedom. . . .

This is Henry Clay talking:

> The president, it is true, presides over the whole . . . but has he power to come into Congress, and to say such laws only shall pass . . . to arrest their lawful progress, because they have dared to act contrary to his pleasure? No, sir; no, sir.

Well, Henry Clay was an opponent of the Presidential veto. He thought that was a despicable thing, the President's veto.

So he spoke, as I have just read. He spoke of the President and he said: It is true, he presides over the whole:

> . . . but has he power to come into Congress, and to say such laws only shall pass . . . to arrest their lawful progress, because they have dared to act contrary to his pleasure? No, sir; no, sir.

The Senate must not blindly follow in the name of party unity. I don't blindly follow in the name of the Democratic Party unity. I don't do that. I won't do that. That will not be my guiding star. In storm or in tempest or in fair weather, that will not be my guiding star.

The Senate must not blindly follow, in the name of party unity or under the yoke of political pressure, a short-sighted path that ultimately undermines our sworn duty to support and defend the Constitution.

I will vote against this homeland security bill because even the amendment that is before the Senate is not enough. I have some amendments that I would like to offer. If this amendment fails, I would like to offer my amendments. It is very questionable as to whether I will get to do that, very questionable as to whether or not those amendments will pass the Senate. I doubt that they will.

So I intend to vote against this homeland security bill. I will raise my voice as long as I have a voice, and I will raise my hand as long as I can raise that hand to attempt to derail this blatant power grab and giveaway of the people's liberties.

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

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

Mr. AKAKA. Mr. President, I ask unanimous consent that I be able to reclaim 5 minutes of my time that I yielded to Senator BYRD.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise in support of the amendment offered by Senator DASCHLE, Senator LIEBERMAN, and Senator BYRD to the pending legislation concerning homeland security.

I voted earlier against invoking cloture on this legislation because in part I disagreed with many of the amendments which were added at the last moment by the House to this bill. The amendment offered by Senator DASCHLE and Senator LIEBERMAN would correct many problems in this House bill, although not all. There is much about the underlying bill which still needs to be corrected. I laid out earlier my concerns. Today however, I want to address the House's legislative ''add-ons'' that should be stripped from this bill. I think it is clear what the house has done in the midnight hour of this Congress.

The House leadership has taken a moving train—legislation for a Department of Homeland Security—and attached gilded carriages for their special friends to travel on this legislative express.

What has been added does not enhance the security of the American people. It enriches a select few companies and special individuals, and very special people. One provision is clearly meant to earmark a new university-based homeland security research center program for Texas A&M University, avoiding an open and competitive award process. All of us have universities, distinguished centers of higher learning in our states, all of which would welcome the opportunity to make their case for this funding. but under this bill, they will not get that chance. However, if the Daschle amendment passes, other colleges and universities would be permitted to demonstrate their competence to be a center for homeland security research, including Texas A&M.

Another provision in this legislation would limit liability to companies producing homeland security technologies. The main intent of this provision is to eliminate the ability of Americans to obtain compensation should they be harmed by any of these technologies. The provision is open-ended. It does not define how anti-terrorism technologies will be identified. Under the liability provision sections, the Secretary has the discretion to designate which technologies will benefit from this additional protection from liability. This section is not about stimulating the development of new technologies to protect us. It is about finding new ways to protect companies from legal liability. Indeed one section of this bill is labeled ''Litigation Management.'' That says it all.

The subparagraphs, almost too small to be noticed, undermine the Federal Advisory Committee Act, or FACA, and the public's right to know the make-up, meeting schedules, and findings of federal commissions, committees, councils, and task forces. These groups are chartered by the President, Congress, and agency heads to give independent advice and recommendations on substantial policy issues and technological problems.

Congress enacted FACA in 1972 to address concerns of committees being redundant, having inadequate oversight, using secretive operations, and not representing public interest. FACA requires that the advice provided by such committees be objective and responsive to public concerns. Committee meetings are required to be open and properly noticed, with specific exceptions. The House bill would give the Secretary of Homeland Security a blanket exemption from FACA requirements once the Secretary notices the creation of a committee and its intent. One wonders why the House Leadership wants to overturn sunshine rules. What do they want to hide?

This is a very serious matter. What sort of oversight will these committees have? Who will serve on them? Will all interests be represented? How will we confirm that the public interests have been met? To allow the Secretary of Homeland Security to set up advisory committees that are free from the balanced regulations of FACA is to retreat back to a time when special interests groups ran roughshod over the public's interest and recommended one sided-views without appropriate oversight.

The original Lieberman substitute, and the original Gramm-Miller amendment, were based upon provisions that were debated and discussed within the Governmental Affairs Committee through hearings and business meetings. The bill before us today has several provisions that have not had that treatment and will directly benefit the airline and rail companies and other special interests.

The Governmental Affairs Committee spent weeks and months studying, debating, and drafting legislation on homeland security. In contrast, this bill was not written in committee and some parts of the bill before us today have had only special interest input. That is not the best way to ensure public safety and national security.

I yield my time, and 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.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003—CONFERENCE REPORT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report to accompany H.R. 4628, the intelligence authorization; that the conference report be considered and agreed to; the motion to reconsider be laid on the table; and that any statements relating to the conference report be printed in the RECORD, without intervening action or debate.

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

The conference report was agreed to.

(The conference report is printed in the House proceedings of the RECORD of November 14, 2002.)

Mr. REID. 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.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. Mr. President, I ask unanimous consent that the Senate be in recess subject to the call of the Chair.

There being no objection, the Senate, at 6:12 p.m., recessed subject to the call of the Chair and reassembled at 8:11 p.m., when called to order by the Presiding Officer (Mr. BARKLEY).

ORDER OF BUSINESS

Mr. REID. Mr. President, I appreciate very much, first of all, the patience of the Presiding Officer. We are sorry that in your first few hours in the Senate you have had to spend so much time here when we have not been doing a lot, but it is necessary that you are here, and we appreciate very much your patience, as I have indicated.

Mr. President, it is my understanding that we are not in morning business. Is that right?

The PRESIDING OFFICER. That is correct.

MORNING BUSINESS

Mr. REID. I ask unanimous consent that we now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

TRIBUTE TO SENATOR JEAN CARNAHAN

Mr. CONRAD. Mr. President, I rise today to pay tribute to my distinguished colleague from Missouri, Senator JEAN CARNAHAN. After losing her husband and eldest son in a tragic plane accident, Missouri called upon Mrs. CARNAHAN to fill the remainder of her husband's Term. Senator CARNAHAN answered the call of duty and did it with a fair, courageous hand.

Senator CARNAHAN was Missouri's first member of the Armed Services Committee in over 25 years. She also served on the Small Business Committee, the Governmental Affairs Committee, the Commerce Committee, and the Special Committee on Aging.

Senator CARNAHAN made a strong economy her top priority. Her ability to secure defense projects for Missouri and safeguard funding for family farmers hurt by flooding and drought clearly shows Senator CARNAHAN's desire to bolster Missouri's economy, provide good jobs for Missouri workers, and support our Nation's effort in the war against terrorism.

Senator CARNAHAN also knew that a highly skilled workforce required equal educational opportunities. Her Quality Classrooms Amendment allowed local schools greater flexibility in deciding how to utilize Federal dollars. She also worked to secure over $1.3 million for programs boosting postsecondary education assistance to low-income students. These initiatives illustrate Senator CARNAHAN's deep commitment to a better education and a brighter future for all Missouri students.

Filling the seat of her late husband, Senator CARNAHAN led with dignity and courage as Missouri's first female Senator. She took office at a time of personal loss and hardship, yet prevailed and proved to be a strong leader for Missouri. I would like to join my colleagues in wishing Senator CARNAHAN and her family the very best in the future.

TRIBUTE TO SENATOR PHIL GRAMM

Mr. BUNNING. Mr. President, I rise today to pay tribute to my good friend and colleague, Senator PHIL GRAMM.

Without Senator GRAMM, none of us would ever know who Dicky Flatt is. We would not know nearly as much as we know about Texas A&M as we do. And we would probably still be trying to repeal Glass-Steagall.

I met Senator GRAMM on a number of occasions when I was a Member of the House of Representatives, but I did not really get to know him until I joined that Banking Committee in January 1999, when he was the chairman.

Senator GRAMM's first order of business was to finally pass a repeal of the Glass-Steagall banking law. I had worked on this same repeal during my first term in the House, 12 years earlier, and I know many others had been working on this effort for much longer than that. But it was Senator GRAMM's dogged determination that finally pushed the ball over the goal line and brought our banking laws into the 21st Century.

I won't bore everyone by going into a long list of Senator GRAMM's other legislative accomplishments; they are too numerous to mention, but I would put him right up there with a small group of other senators who have had the greatest impact on the Senate in the past century.

Outside of our working relationship, I have also gotten to know Senator GRAMM, and his lovely life Wendy, very well over as friends.

I would also like to tell a little story about how Senator GRAMM's unselfishness greatly assisted me when I was in a tight spot. Everyone in this body remembers the anthrax attacks of last year. As a resident of the Hart Building, I was one of those who was forced to find other space when the Hart building was closed. The Architect of the Capitol, the Senate Superintendent and the Rules Committee did a great job, under very trying circumstances, of finding space for everyone. But there were about fifty offices that were relocated so space was tight. My staff and I were sitting on top of each other down in EF–100 underneath the back steps of the Capitol.

We were glad to have the space. But it wasn't much more than a glorified broom closet.

Well, Senator GRAMM heard about my predicament and very graciously let me use his Capitol hideaway office until the Hart building was reopened. He only asked that I did not ''trash the place and leave empty whiskey bottles on the floor.'' I can assure the Members of the Senate and the people of the Commonwealth of Kentucky that I followed his instructions.

I am also fairly confident that as much as I appreciated the kind gesture, my staff appreciated the fact I had somewhere else to go even more. It is not just Members who will miss Senator GRAMM, but staff as well.

We will miss his leadership, but I think we will miss his courage even more. Senator GRAMM is wiling to take unpopular stands. He is willing to lose a vote 99–1. He is willing to keep the Senate in all night to fight for what he believes in, no matter how unpopular that stand may be.

One example that stands out clearly in my mind was at the beginning of the debate on the Clinton health care bill. Many don't remember now, but when we first started working on that issue in Congress, President Clinton had a lot of momentum and it looked like only a foregone conclusion that he would get some sort of bill passed. Those of us who didn't the President's proposal really felt like we were swimming upstream.