

gave his life. Those in line to vote, identifying with their index finger their commitment to liberty, were not injured and did not leave. They voted and democracy was born in that precinct, in that district in Iraq, in large measure, because of the bravery and heroism of that Iraqi soldier, trained by United States and coalition forces.

So as we consider the \$81.9 billion for the continuation of our effort in Iraq and Afghanistan, and to a certain extent in the Middle East, if we look for optimism, it surrounds us everywhere. Only after our engagement in Afghanistan were the Taliban deposed. Only after our engagement in Iraq was Hussein captured. Only after our commitment against terrorism and countries that harbor terrorists did Libya give up its weapons of mass destruction.

Recently, the Palestinians elected a new leader, Abbas, and already the prospect for hope and peace in the Middle East between Israel and Palestine is brighter. To me, that is great optimism for the future of security and stability, not only in Iraq, not only in the Middle East, but throughout the world.

We also must ask ourselves this: If we don't have optimism in the investment we make in the war on terror and the spreading of democracy, then what dividend would we receive by making no investment at all?

My submission to you is that we would be fighting the war on terror not only overseas but on our own streets. We would be spending more than we invested in this war to try to be a defensive country, rather than an offensive country helping to spread democracy wherever people yearn for it.

I have great respect for those who will question any spending we might entertain. I understand the concerns about the investment that we may make in the coming weeks in the supplemental for Iraq. But I will tell you that with the comments of Deputy Ambassador Salih, the comments of Dr. al-Rubiae, and the evidence of the heroism of the Iraqi soldier at the polling place Sunday, a week ago, it is clear to me this supplemental will continue that major pillar of support for democracy in the Middle East; that is, the presence of U.S. men and women in our Armed Forces to continue to secure that nation so it can finalize a constitution and have permanent elections for its peace and its security.

Our President has sent us a document to make an expanded investment in peace and democracy. I submit to you that the evidence for optimism abounds in Iraq and I, for one, will stand by this President and stand by our men and women in harm's way, so that their democracy, which has now bloomed, will flourish in a part of the world that has never seen it.

I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, as I understand, we are in a period for morning business?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. Is there a time limit on statements in morning business?

The ACTING PRESIDENT pro tempore. The time until 12:30 p.m. is equally divided.

Mr. KENNEDY. I thank the Chair.

#### NOMINATION OF MICHAEL CHERTOFF

Mr. KENNEDY. Mr. President, I support the nomination of Mr. Chertoff to be Secretary of the Department of Homeland Security. He brings a wealth of experience to this position and that experience will serve him well, because the challenges facing this department in the post 9/11 era continue to be immense. The agency can never afford to drop its guard for a moment. From protecting our borders to managing difficult immigration issues, Mr. Chertoff will be at the heart of many of the country's most complex security issues.

Just under 2 years ago, the Department of Homeland Security was created in the largest overhaul of Federal agencies in more than half a century. It merged 185,000 Federal workers and 22 agencies in order to create a more national effort to protect ourselves in the wake of September 11.

It is a job that requires overseeing the development of innovative methodologies and techniques to prevent and deter terrorist attacks. It requires rapid response to threats and hazards, and it requires effective information analysis and information sharing between agencies at all levels—Federal, State and local.

The Secretary's job is to strengthen and maintain the security of our airports, seaports and land borders. But, equally important is the Secretary's ability to welcome the more than 500 million citizens, permanent residents, lawful visitors, students, and temporary workers who cross our borders each year.

As Secretary, Mr. Chertoff will have a major role on immigration policy. One of the most important responsibilities of his position is to see that the immigration service and enforcement functions are well-coordinated, and that the service functions are not given short shrift. Without strong leadership and the insistence on close coordination, the officials in the various immigration bureaus of the department are prone to issue conflicting policies and legal interpretations and create disarray in the department's mission.

Questions have been raised about Mr. Chertoff's role in the Criminal Division of the Department of Justice in developing the investigative strategy that led to the department's detention of hundreds of immigrants after 9/11. According to the report of the department's Inspector General in June 2003, there were "significant problems in the way the detainees were handled." There were also problems that included

a failure to distinguish detainees suspected of ties to terrorism from detainees with no such connection. The Inspector General found there was inhumane treatment of detainees at Federal detention centers, unnecessarily prolonged detention resulting from the department's "hold until cleared" policy, secret detentions without formal charges, interference with access to counsel, and closed hearings.

I met with Judge Chertoff and raised my concerns about these detainees and his role in formulating the policy. He recognized and understood that significant problems had occurred at the Justice Department in the treatment of the detainees and indicated a willingness to re-evaluate current policies and put in place protocols to prevent these abuses from recurring.

Unfortunately, the administration has not been nearly as accommodating. It has refused to provide vital documents to the two Senate Committees charged with oversight over the Department of Homeland Security, the Homeland Security and Government Accountability Committee and the Judiciary Committee. Specifically, the administration continues to play hide and seek with documents that would shed light on the issues of torture and interrogation. In doing so, the administration persists in displaying a disturbing disregard for our constitutional role in Presidential nominations. By refusing to come clean and provide necessary documents, and by discouraging responsiveness and candor from its nominees on the issue of torture, the administration is only making the crisis worse, further embarrassing the Nation in the eyes of the world, and casting greater doubt on its commitment to the rule of law.

As Senator LEVIN has emphasized, FBI e-mails state that while Mr. Chertoff headed the Criminal Division, discussions occurred between the FBI and the Justice Department about interrogation abuses. The e-mails indicate that FBI personnel were deeply concerned about the interrogation techniques being used at Guantanamo Bay by the Department of Defense and the FBI communicated their concerns directly to certain persons in the Criminal Division.

The e-mails in their public form, however, were heavily redacted to avoid disclosing who spoke to whom. Although the e-mails were never provided by the administration to the Senate, we were able to obtain the documents in the same way as the general public obtained them, by surfing the web for the redacted documents as released in a Freedom of Information Act lawsuit.

Senator LEVIN and Senator LIEBERMAN asked for the unedited version of the e-mails in order to learn who in the FBI communicated the information and who in the Criminal Division received it. The request was denied, even though the information might well have been highly relevant

to our consideration of Mr. Chertoff's nomination. It is beyond debate that our advice and consent function under the constitution includes inquiries into matters which may reflect on the nominee.

Mr. Chertoff may have no knowledge about the e-mails or the FBI discussion, but part of our constitutional obligation is to obtain enough information to make an informed decision. The American people deserve to know whether we have done our constitutional job responsibly.

Senator LEVIN has already spoken passionately about the stiff-arm that he and Senator LIEBERMAN and their committee received from the Department of Justice as they sought to give meaning to the words "advice and consent." From the text of the redacted version, it's obvious that Mr. Chertoff should have been asked about the torture issues in the depth that the documents would have enabled. He was head of the Criminal Division during the relevant time period. Naturally, they asked to see the unredacted version of the document prior to any vote on the nomination.

But the administration flatly refused to cooperate. The White House could easily have provided the documents only to Senators and to staff with appropriate security clearances. It did not. Instead, it concealed the full text of the e-mails in what amounts to an obvious coverup.

In addition, Senator LEAHY and I sent a letter to the Department of Justice on February 4, asking it to provide a separate department document which reportedly advised the CIA on the legality of specific interrogation techniques at a time when Mr. Chertoff was head of the Criminal Division. Again, the administration refused to provide it, claiming that its contents were classified, even though Senators are cleared to review classified material.

Our problems with the administration on this nomination, however, pale in comparison with the failure of the Senate Republican majority to carry out its own constitutional responsibilities on this nomination. Instead of insisting on adequate answers to the questions raised by the documents, they have acquiesced in the administration's coverup and abdicated their own independent constitutional responsibility to provide "advice and consent" on Presidential nominations. They have allowed partisanship to trump the Constitution.

In effect, the Republican Senate is acting as George Bush's poodle. The Founders of our country would be appalled at what has happened in this case. Obvious questions about this nomination have gone unanswered, and the Republican leadership of the Senate, instead of meeting its constitutional responsibility to seek answers, rolls over and shirks its duty to see that the Senate's consent on this nomination is an informed consent, not a blatantly defective consent.

The Founders of our country did not create a parliamentary democracy. They created a democracy based on the fundamental principle of separation of powers with the Congress and the Judiciary acting as checks and balances on the power of the President. We ignore that fundamental principle at our peril.

A major issue in the 2006 congressional elections will clearly be the rubberstamp Congress. The refusal by the Republican Senate majority to exercise its constitutional responsibilities on this nomination is a flagrant example of that problem.

An essential part of winning the war on terrorism and protecting the country for the future is protecting the ideals and values that America stands for here at home and around the world. That means standing up against torture. It means shedding light on an administration that prefers to act in darkness. It also means living up to our oath of office as Senators to protect and defend the Constitution.

The checks and balances in the Constitution are essential to our democracy and a continuing source of our country's strength. They are not obstacles or inconveniences to be jettisoned in times of crisis. We owe it to those who come after us to be vigilant. Republicans and Democrats alike must insist that our constitutional obligations and prerogatives be respected. I hope very much that this blatant abdication of our constitutional responsibility will not be repeated.

Regardless of the difficulties we have faced in obtaining these important documents, I am looking forward to working closely with Mr. Chertoff. His long history of government service and dedication to the public good are impressive. He has left the security of lifetime tenure on the federal bench to accept the challenge of steering the Department of Homeland Security through difficult waters. His willingness to respond to the President's call speaks well of his character.

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

The PRESIDING OFFICER (Mr. SUNUNU). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I ask unanimous consent to be able to proceed for 10 minutes as in morning business.

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

Mr. DODD. Mr. President, I rise this afternoon to discuss briefly the nomination of Judge Michael Chertoff, of New Jersey, to be Secretary of Homeland Security. I thank our colleagues on the Homeland Security and Governmental Affairs Committee, especially Chairwoman SUSAN COLLINS and my

dear friend and colleague from Connecticut, JOSEPH LIEBERMAN, for their close consideration of this nomination. The task of reviewing the nominee for Secretary of Homeland Security is a difficult one, and the committee did a fine job.

I have reviewed the credentials of Judge Chertoff. They are impressive. In a legal career spanning over a quarter of a century, Judge Chertoff has shown a respectable dedication to public service. In my view, he has also demonstrated an ability effectively to manage a variety of security issues. For these reasons, I believe that Judge Chertoff is qualified and capable to serve as Secretary of the Department of Homeland Security. I plan on voting for his nomination.

The job for which Judge Chertoff is being nominated is a challenging one. In this post 9/11 era, the Secretary of Homeland Security bears the primary responsibility of ensuring the safety of all Americans from threats that range from terrorist attacks to natural phenomena. In order to meet this responsibility, the Secretary must oversee 22 separate agencies and 180,000 employees, all of whom carry out critical daily duties that include safeguarding our borders, securing our domestic infrastructure, and providing emergency disaster assistance. We all know that success in carrying out these duties will rest on the ability of the Secretary to coordinate and manage the resources at his disposal. They are huge.

If confirmed, Judge Chertoff will unfortunately find that the current resources at his disposal are inadequate to ensure the operation of an effective Department of Homeland Security. I strongly agree with several of my colleagues on the Homeland Security and Governmental Affairs Committee who argue that more must be done to improve the Department's ability to identify security threats and to respond to these threats in an effective and appropriate manner.

I agree that the Department of Homeland Security must be given adequate resources to address the plethora of security vulnerabilities that continue to plague our borders, airports, seaports, transportation systems, utility networks, and financial networks. I also agree that more work must be done to develop and implement a Government-wide strategy on homeland security activities, and to devise specific plans of action for specific threats. Furthermore, I strongly concur that more resources must be provided to our first responders—the millions of brave men and women who make up our front lines of defense at home.

For any homeland security response to be fully effective and successful, our firefighters, law enforcement personnel, and emergency response teams require the most updated equipment and training to function. Regrettably, the administration's fiscal year 2006 budget deeply cuts these and other initiatives related to homeland security.

All of these challenges that I mention demand immediate and long-term investments. While I applaud the work that has already been done to enhance our domestic security since 9/11, I remain, as many of my colleagues do, deeply disturbed by the administration's continued disinclination to invest adequately in these activities. As more gaps in our security are uncovered and exploited, and as more work is being done to enhance our capabilities in identifying closing these gaps, the Bush administration's policy has been to provide less resources, including unthinkable cuts of \$615 million to State homeland security initiatives and our first responders. How can we fully expect to be safe as a nation if the very people who are committed to our safety are deprived of the vital resources that ensure our safety?

In his testimony before the Homeland Security and Governmental Affairs Committee, Judge Chertoff indicated his determination to ". . . improve our technology, strengthen our management practices, secure our borders and transportation systems, and most important, focus each and every day on keeping America safe from attacks."

I am encouraged by these remarks, and I hope Judge Chertoff's determination can allow him to meet the challenges, but he faces some awesome ones within the administration, if, in fact, these budget cut proposals are enacted into law.

I am also encouraged by the remarks he made regarding the rights to due process that all Americans enjoy. In his testimony to the Homeland Security and Governmental Affairs Committee, Judge Chertoff said:

I believe that we cannot live in liberty without security, but we would not want to live in security without liberty.

I believe this position is noteworthy, especially in light of the report issued by the Department of Justice inspector general in 2003 that criticized the prolonged detention of hundreds of people—primarily immigrants—of suspected ties to terrorism that were later deemed groundless. Judge Chertoff admitted that mistakes were made in the detention and treatment of these individuals—an admission rarely heard from this administration—and vowed to prevent them from happening again.

The question for our country is not whether Judge Chertoff is the right man for the job—I believe he is—but whether Judge Chertoff will be given an impossible job by the President who nominated him. We surely cannot meet the needs of our homeland security apparatus on a tin-cup budget, just as we cannot meet the needs of our military, our schools, and our health care facilities.

I find it troubling that—at the same time as it cuts support for police, firefighters, schoolchildren, and hospitals—this administration continues to view as sacrosanct the massive tax cuts worth \$1.6 trillion that benefit

only some of the most wealthy individuals in our Nation. Clearly, the President is not willing to ask any of these people—although I think many of them would be more than willing—to make the sacrifice for the well-being of our Nation. Yet, at the same time, the President is willing to tell firefighters, law enforcement personnel, and emergency response teams—people who risk their lives every day for our Nation—that not only are they going to get fewer resources each year, but they are required to do more with less. This severely skewed set of priorities is simply stunning. While it may be difficult for many of us to see this mismatch clearly today, I believe future historians who write about this period will harshly judge it as such.

If confirmed, Judge Chertoff faces formidable and daunting challenges—challenges that must be overcome if we are to ensure the safety of this country and well-being of all Americans. I speak on behalf of all of my colleagues when I wish him the best in this very difficult endeavor he is willing to undertake.

I am also here to discuss another issue raised by our colleague, Senator CARL LEVIN of Michigan. The issue concerns the repeated failure of this administration to provide the Senate with information necessary to carry out its constitutional responsibilities of giving advice and consent and conducting oversight of the executive branch.

In a letter written by the Department of Justice to Senators LIEBERMAN and LEVIN on February 7—just over a week ago—the Department of Justice claimed that an unredacted document related to the Chertoff nomination would not be provided to the Homeland Security and Governmental Affairs Committee because ". . . it contains information covered by the Privacy Act . . . as well as deliberative process material." The assertion by the Department of Justice that their inability to comply rests on the Privacy Act is absurd and wholly unacceptable.

As Senator LEVIN has stated—and I strongly agree with him in this—the Privacy Act protects private individuals from having personal information released without their consent. In this case, the Department of Justice is using the Privacy Act to conceal the names of public officials who have engaged in Government activities at taxpayers' expense. That is precisely the kind of case in which Congress ought to have full knowledge of Government personnel and their activities in order to exercise its advice and consent responsibility fully.

To deny the Senate information about what public officials are doing at taxpayers' expense is essentially to deny the American people their right to know what their Government is or is not doing in the name of its citizens. To deny the American people their right to know of their Government's actions is an abuse of not only the Pri-

vacancy Act, it is an abuse of power, in my view.

This may seem like a small matter to some, just one document. However, it should be noted that Senator LEVIN has precisely and carefully raised an issue that would be deeply disturbing to anyone who is committed to openness and accountability in our Government. I suggest to my colleagues that we are going to be seeing this issue arise over and over again if we as a body—all of us here—do not challenge it. I do not care what party is in the White House. If any administration starts making the case in the Executive Branch that the Privacy Act applies to Government personnel and Government documents that Congress may need to fulfill its Constitutional obligations, then a dangerous precedent will be set—one that I think we will deeply regret.

This matter reflects an already persistent, almost obsessive preoccupation by the current administration with secrecy, thereby avoiding accountability to Congress and, of course, to the citizens we seek to represent.

The examples of this preoccupation are almost too many to recite. One example that comes to mind is when Members of Congress and environmental organizations were unable to ascertain who—just the names—participated in the Vice President's energy task force, the group which laid the blueprints for the administration's current energy policy.

Another example is the refusal of the recent nominee, now current Attorney General, to provide information to the Judiciary Committee pertaining to the development of his legal rationale for permitting torture. Of particular note in this case, when asked to provide information, the Attorney General said:

I do not know what notes, memoranda, e-mails, or other documents others may have about these meetings, nor have I conducted a search.

The unwillingness even to search for information requested by Congress epitomizes a certain official arrogance that sets a dangerous precedent because, when carried to its conclusion, it impairs and even impedes most congressional oversight. Government employees are named in countless documents that Congress needs in order to carry out its constitutionally mandated responsibilities and to shine the light where appropriate for the people of this country on the actions of our Government.

In closing, I do not believe Judge Chertoff is an architect of the policy to deny the public their right to know what their Government is doing. That point needs to be made crystal clear. If I thought that were the case, I would not support this nominee. I think Judge Chertoff has made clear how he views these matters. But Senator LEVIN has raised a very important issue that transcends this nomination and reaches every agency and office in this government. It is the issue of preserving the openness, transparency,

and accountability of our democratic government. I thank Senator LEVIN who, once again, during his service here, has proved how valuable attention to detail is. I commend my colleague for raising it.

I thank the indulgence of the Chair. I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:38 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

#### EXECUTIVE SESSION

#### NOMINATION OF MICHAEL CHERTOFF TO BE SECRETARY OF HOMELAND SECURITY

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session and resume consideration of the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Michael Chertoff, of New Jersey, to be Secretary of Homeland Security.

The PRESIDING OFFICER. Who yields time?

The Senator from Maine.

Ms. COLLINS. Mr. President, I yield 5 minutes to the distinguished Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Maine for yielding me time.

I am in support of the President's nominee, Judge Michael Chertoff. He seems to have worked for almost every part of the Federal Government, including this body. I heard the Senator from Maine say that she had never seen a better witness before her committee.

As Secretary of Homeland Security, Judge Chertoff will play a very important and visible role in our everyday lives, protecting us from terrorism, but my purpose today is to highlight another job he has. He is also the chief immigration officer. As Secretary, he will oversee the Bureau of Citizenship and Immigration Services, the successor to the INS, which manages immigration in this country. This job of Judge Chertoff is not primarily about keeping people out of the United States; it is also about welcoming new Americans into the United States.

The numbers are down some since 2001, but as many as 1 million immi-

grants become new American citizens each year.

I have attended a number of the ceremonies which are held in Federal courthouses all over America every month to welcome and naturalize these new citizens. I was in Nashville in December when 50 or 60 people from all backgrounds were administered the oath of allegiance by Judge Echols. The oath requires each new American to renounce any old allegiance and swear a new one to the United States of America.

Each one of these new citizens has waited at least 5 years. They have learned English. They have learned something about U.S. history. They have proved they are of good character. Many new citizens have tears in their eyes as they recite that oath. It is an inspiring scene. Each of these new citizens brings a new background and cultural tradition to the rich fabric of American life. That increases our magnificent diversity, but diversity is not our most important characteristic.

Jerusalem is diverse. The Balkans are diverse. Iraq is diverse. A lot of the world is diverse. What is unique about the United States of America is that we take all of that diversity and make ourselves into one country. We are able to say we are all Americans. We do that because we unify it with principles and values in which we all believe: liberty, equality, rule of law. It also helps that we speak a common language. It is hard to be one people if we cannot talk with one another. Many of these new citizens and many others living in this country lack a solid grasp of our common language or a clear understanding of our history and civic culture. Without proficiency in English, our common language, and an understanding of our history and values, immigrants will find it difficult to integrate themselves into our American society.

So my hope today is that Judge Chertoff does a magnificent job in his role at preventing terrorism. My hope also is that he does a good job in keeping out of this country people who are not legally supposed to be here. But equally important is Secretary Chertoff's role in welcoming new citizens to this country, helping them learn our history, our common language—helping all of us remember those principles that unite us as one country. That is a part of the Department of Homeland Security. It is of increasing interest to Members of the Senate on both sides of the aisle, and I look forward to working with Judge Chertoff in this new role and I support his confirmation.

The PRESIDING OFFICER. Who yields time? The Senator from Maine.

Ms. COLLINS. Mr. President, I yield 5 minutes to the distinguished Senator from Virginia and, from the minority's time, I will yield 10 minutes to the distinguished Senator from New York.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I am privileged to be the new boy on Senator COLLINS's committee. My mission is to try to achieve the smoothest working relationship between the Department of Defense, with which I have been privileged to work these 27 years in the Senate, and the distinguished new department and the committee for homeland defense over which my colleague presides as able chairman together with Senator LIEBERMAN.

Just a word or two I want to speak on Judge Chertoff. I, frankly, had not met him prior to the President's very wise selection of this able individual. I rise today to urge my colleagues to give the strongest endorsement possible to this nominee.

I started my career as a young lawyer, a prosecutor, but my first job out of law school was law clerk to a Federal circuit court judge, the same position that Judge Chertoff holds today. I recall all through law school and the early part of, I guess about 8 or 10 years that I practiced law, lawyers always thought: Maybe someday I could be a judge, a Federal judge. The whole bar looks up to the judicial branch, as they should. It is the third branch of our magnificent Republic. When an individual is selected by a President and confirmed in the Senate, he or she then dons that black robe, and it is a lifetime appointment.

I was privileged to observe the life of a Federal judge. My judge was E. Barrett Prettyman, and I had the privilege of standing on this very floor several years ago and recommending the Federal courthouse here in Washington be named for Judge Prettyman. I am always grateful to the Senate for its wisdom in accepting my recommendation. But I remember that judge so well. He had the strongest influence on my life. I aspired at one time to be a Federal judge, but I hastily tell my colleagues I am not sure I ever would have been qualified, for various reasons.

But when you accept that appointment you take that oath of office for life. That is why I, and I think most if not every one of my colleagues, spend so much time working with our Presidents to find the best qualified people to assume these important jobs in the Federal judiciary. But it is a lifetime appointment.

When I looked at Judge Chertoff in my office, we compared experiences. He was a law clerk on the Supreme Court, so he had gone through some of the similar experiences that I had as a lawyer, and also I was assistant U.S. attorney as was he. I said: You have to explain to me why you gave up a lifetime appointment to a position in which you can control your hours and largely control your vacations and have a magnificent family life and everything else to take on this enormous, uncertain challenge.

He looked me in the eye, and he said: In America, you have to step up and be counted when the President and the citizens of this Nation need you. I give