

coming to grips with the need to make sure companies are honest when they account for their profits.

It seems as though for a few years there in the late-90s, some CEOs forgot about ethics and morals. They could say just about anything about their profits and no one was there to check. As long as the stock market was going up, no one seemed to care ethics and morals, and laws were not enforced.

But now we're checking. Now the SEC is doing its job of making sure shareholders aren't getting ripped-off. Now we're going after the corporate criminals.

A few years ago, the federal government looked the other way. Now, thanks in large part to President Bush, that's not happening any more.

Having said that, I believe that when the economic history of this era is written, what will strike people is not that we had a recession but that things were not worse.

In early 2000 the NASDAQ hit 5000. If you had told people that two years later the NASDAQ would be treading water at about 1200, as it is now, they might have assumed we had gone through some sort of Depression. Well, as bad as things got last year, we did not have a Depression.

The policies we enacted over the past two years have made the economy better, not worse. If it weren't for those policies who knows how weak the economy would be now.

Over and over again we hear that our policies are bad for the economy because they turned surpluses into deficits. That is just not true.

I have staked a large part of my career arguing for fiscal discipline, much of it when it was unpopular, even with many members of my own party. But now is not the time to quibble about the budget deficit.

The deficit this year will be about 1.6 percent of GDP. But look at the same point in previous business cycles. Back in the 1976 recovery, the deficit was 4.2 percent of GDP. In the 1980s it peaked at 6 percent. In the early 1990s it peaked at 4.7 percent. So 1.6 percent is not large considering we are in the early stages of a recovery and in a war.

If fiscal mismanagement were hurting the economy we would see rising interest rates. But interest rates are going down, not up. The rate on 10-year Treasury Notes is the lowest in 40 years. Homeowners are refinancing their mortgages at a record rate. Notice that those who claimed the Bush tax cut would lead to higher interest rates have been very quiet of late regarding that key point in their argument.

Yes, things could be better. But long term, our economic fundamentals are strong. Productivity is growing at about a 5 percent rate and new innovations continue.

Cutting taxes was the right thing to do and we did it just in the nick of time. I am proud of the work we did this year and last year in cutting taxes

and my fellow Republicans and a few Democrats should be proud too.

I thank the Senate for yielding time to me, and I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I listened to my distinguished colleague with great interest. If my colleague wishes to speak for a few more minutes, I will follow my colleague. I say to the Senator, I was very interested in what you were saying.

Does my colleague wish to take some additional time?

Mr. DOMENICI. I say to the Senator, that is very nice of you to offer. When you want to speak on the floor, you take the gamble. I have some other things to do. I had to wait a little longer for my position. You can rest assured that since I think it is pretty good, the Senate will hear more before we go out. And they will hear another one on two subjects that have to do with who is to blame for what, suggesting we ought to get on with doing things rather than blaming, which is what I think the American people would like.

Thank you very much, I say to the Senator.

Mr. WARNER. Mr. President, I thank my colleague. He is clearly one of the elder statesmen of this institution, with some almost 30 years of service in the Senate.

#### THE GRAMM-MILLER AMENDMENT TO THE HOMELAND SECURITY BILL

Mr. WARNER. Mr. President, I rise today, with other colleagues, to support the Gramm-Miller amendment. I wish to address very specifically some provisions.

The overall amendment addresses the concerns which I had very early on and are outlined in a letter to the Governmental Affairs Committee. At that time, I said to the then-chairman, in writing, I had specific concerns. This particular amendment by GRAMM and MILLER has taken care of those concerns. It is for that reason I lend my support.

It provides the President with the authority he needs to organize our Government at this critical time to deal with these most unusual threats that are confronting our Nation today.

The Presiding Officer and I are privileged to serve together on the Armed Services Committee, and he full well appreciates the diversity and the unprecedented threats that face this Nation today.

I think Senators GRAMM and MILLER have gone about this in a very balanced way. I specifically thank the Senator from Texas and the Senator from Georgia because I approached them, asking that they include a provision in their bill which I had devised with the help of my colleague from Tennessee, Mr. THOMPSON, my colleague from Utah, who is in the Chamber, and my col-

league from Virginia, Senator ALLEN. Senator ALLEN and Senator BENNETT have taken the lead in the high-tech caucus.

In the course of one of our periodic meetings on this subject, the group brought to our attention the need to have this type of indemnity legislation, and once Senator BENNETT, Senator ALLEN, and I approached the Gramm-Miller team, they accepted this amendment. I wish to talk about it today and the importance of that amendment within the amendment that is on the floor now.

The legislation I am proposing with others would authorize the President to apply basically the same indemnification authorities now available to the Secretary of Defense, such that it can be applied to a much larger number of the departments and agencies of the Federal Government, as well as State and local—as well as State and local—governments so these entities of the Federal and State government can go about the business of contracting with our private sector and enable the contractors to have certain protections regarding the products which are the subject of the contract or the services, which products and services are directly contributing to the war on terrorism and the protection of our Nation.

It is quite interesting, I find there is an urgent need for this authority. It has existed in the Department of Defense for so many years. I was privileged to serve in the Department of Defense from 1969 through 1974 as Secretary and Under Secretary of the Navy. The Presiding Officer, I think, was on active duty at that time and had an exemplary career in the military.

But, for example, contractors today would not sell the chemical and biological detectors to a wider range of Federal agencies and departments, and State and local, but they can take the same product and sell it to the Department of Defense. So we are kind of caught up in interpretations of a Presidential directive, the existing law. I think we do not have the time to sort it out in the courts, and it is best to clarify it here in Congress.

This is a bipartisan effort, I assure the Presiding Officer and others.

Some of our Nation's top defense contractors simply cannot sell these products to the other agencies, State and Federal, today. In the meantime, our vulnerability here in the United States, in my own experience, is of great concern to me.

We should give the President the option that he currently does not have of deciding whether other departments and agencies, Federal and State, should have this authority.

The liability risk has been a longstanding deterrent to the private sector, freely contracting with the Department of Defense, but now wishes to broaden its contracting with other departments and agencies.

Congress has acted in the past to authorize the indemnification of contracts. I find this history fascinating. For example, on December 18, 1941, just a short time after the tragic Pearl Harbor experience—2 weeks—the Congress enacted title II of the First War Powers Act of 1941. By providing authority to the President to indemnify contracts, this legislation and its successor pieces of legislation have enabled the private sector to enter into contracts that involve a substantial liability risk occasioned by their services and products.

Administrations since President Franklin Roosevelt's day have used these authorities to indemnify or share the risk with defense contractors. This was required to jump-start the "arsenal of democracy," as described by the President in 1941.

It was true again in 1958, when the nuclear and missile programs were facilitated by the indemnification of risk associated with the use of nuclear power and highly volatile missile fuels.

It is true today for technology solutions required by agencies engaged in the war against terrorism. And that is the purpose of this legislation.

This war is going to be different in many ways—many ways—we cannot envision at this moment or in the future. For one, much of the Nation's homeland defense activities are going to be conducted by State and local governments. It is, thus, imperative to ensure that State and local governments can access vital antiterrorism technologies and not let the contractor be subjected to undue risk.

To facilitate this, my amendment would require the establishment of a Federal contracting vehicle to which State and local governments could turn to rapidly buy antiterrorism solutions from the Federal Government. The President would also be authorized, if he deemed it necessary, to indemnify these purchases. Again, discretion rests with the President, and he, in turn, has delegated this authority to the Secretary of Defense. I presume if this legislation becomes law, he will delegate it to other heads of departments and agencies.

Again, I wish to emphasize two points: One, that this authority is discretionary. The President, on a case-by-case basis, may decide whether to indemnify contracts.

I expect the President will use the authority much as it has been used at the Department of Defense, carefully and thoughtfully, and only for those products the Government cannot obtain without the use of this authority.

The second point I want to emphasize is that indemnification is not in conflict with any efforts to limit or cap liability. My legislation should not be seen as an alternative for tort reform, but merely as one tool that can be used by the President to ensure that vitally needed technologies necessary for homeland defense are placed into the hands of those who need them.

During World War II and all subsequent wars, conflicts and emergencies

in which the U.S. has been involved, we have needed domestic contractors to be innovative, resourceful and ready to support efforts at home and abroad. In 1941, the Congress wanted contractors to know that if they were willing to engage in unusually hazardous activities for the national defense, then the U.S. Government would address the potential liability exposure associated with the conduct of such activities. Our position should be no different now.

I conclude with remarks about another matter connected with the Gramm-Miller amendment. There are many aspects in the creation of this new department of homeland defense that are unprecedented. Contentious civil service issues have largely driven the debate on homeland security in this Chamber in the past days and weeks. Over 170,000 employees from 22 agencies will be transferred to the new Department of Homeland Security, including an estimated 43,000 Federal employees represented by 18 different unions.

Since President Bush proposed the creation of homeland security, I have been involved in discussions with a number of my colleagues on both sides of the aisle and with the Federal employee unions and their members about the potential consequences to Federal employees. In order to successfully achieve this complex collaboration, I recognize the importance of the President's request for increased flexibility in managing the new Department.

The uncertainty, however, of the administration's intentions with additional labor and management flexibility has fostered mistrust, understandably so, among these Federal employees. The administration in no way should put into question basic labor rights and civil service protections for these employees.

The administration cannot ignore the impact this is having on morale, not only on the employees being transferred, but throughout the Federal workforce. With no firm commitment from the administration that collective bargaining rights will not be weakened outside of reasons directly related to national security, I cannot blame these Federal employees for being anxious.

I can personally attest to the dedication of civil service employees throughout the Federal Government. There has never been reason to question that during a national crisis, Federal employees perform their duties first, setting aside personal grievances. Federal employees have been relocated, reassigned and worked long hours under strenuous circumstances with no complaints since the September 11 attacks. Their loyalty is first and foremost to their country. Federal employees have proven this time and again.

I have carefully considered several compromise proposals on the civil service provisions in the homeland security legislation. I am strongly concerned about initiatives that would weaken or

interfere with the President's authority under current law to exclude Federal employees from collective bargaining if those employees are primarily involved in national security work. Every President, since it became law in 1978, has exercised this authority in the interest of national security. There can be no argument that this new department's primary purpose and focus is protecting our national security interests.

That said, I would strongly encourage the administration to engage in further discussions with the Federal employee unions and assuage some of their concerns. Information should be available on an ongoing basis concerning the administration's actions and intentions regarding creation and management of the new department.

It is my hope that before the House of Representatives and Senate vote on the final version of homeland security legislation, some provisions can be agreed upon to lessen the tension, the fear that exists in the civil service ranks.

I have been privileged to have lived my life in Virginia, the greater metropolitan area, and have had the opportunity to be in the civil service in a number of positions, all the way from a letter carrier and forest firefighter, in 1943-1944, and service in the military to Secretary of the Navy, where I was privileged to have, as a part of my department, several hundred thousand Federal service employees.

I guarantee you, the ranks of the Federal civil service employees are no less patriotic than the ranks of the military. They are fine, loyal, hard-working Americans. I am hopeful the distinguished manager of the bill and others can listen and take into consideration their concerns and somehow put into this bill those provisions which will lessen the fear and the concern among these brave citizens in our country.

Mr. GRAMM. Will the Senator yield?

Mr. WARNER. Yes.

Mr. GRAMM. Mr. President, no one has been clearer or more effective or more concerned about trying to protect the rights of people who work for the Federal Government than the Senator from Virginia. It would have been easy for the Senator from Virginia to simply look the other way, forget about the terrorist threat, and be on the other side of this issue. It has not escaped my attention many people who are Government employees work in the Senator's State.

I thank the Senator for making this bill, supported by the President, better by his input. I thank him for looking at the big picture. If we could keep everything the way it is and provide for the national security of the country, there would not be much of a debate. But, unfortunately, in real life, it is not black and white, right or wrong; it is tough choices.

Maybe it is because the Senator has the background of having been involved in defending the Nation himself,

having been Secretary of the Navy, or maybe it is simply because he just has the big picture. I thank him for his leadership on this issue.

I assure him, if there is any way we can work out an agreement on a bipartisan basis to find a solution, I want to do that.

There is one constraint: We cannot give the President a law that won't get the job done. If he says he needs a pickup truck, we can't give him this beautiful, shiny pickup truck with no steering wheel.

I look forward to working with the Senator. I appreciate his leadership and, quite frankly, his courage on this issue.

Mr. WARNER. Mr. President, I thank my colleague for his very thoughtful remarks. If I may say, in conversations in the presence of the President of the United States on this subject and the importance of homeland security—and I have attended several meetings along with other colleagues—this matter has been raised. I detect in the President no concern that Government employees are secondhand citizens, but they are entitled to their rights.

That is the purpose of this legislative body, to bridge the gaps to the extent we can and protect all the people.

I thank my colleague and yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. EDWARDS). Morning business is closed.

#### HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The legislative clerk read as follows:

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

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

Gramm/Miller amendment No. 4738 (to amendment No. 4471), of a perfecting nature, to prevent terrorist attacks within the United States.

Nelson (NE.) amendment No. 4740 (to amendment No. 4738), to modify certain personnel provisions.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that at 3:45 p.m. today the motion to proceed to the motion to reconsider be agreed to, the motion to reconsider be agreed to, and without further intervening action or debate, the Senate proceed to vote on a motion to invoke cloture on the Lieberman substitute amendment, for H.R. 5005, the Homeland Security legislation.

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

Mr. REID. Mr. President, we are in a parliamentary posture where we will

have a vote tomorrow at such time as may be determined, either that or an hour after we come in. The majority leader has said privately and has authorized me to say publicly that we would be willing to have that vote today, the reason being, of course, we have been told by the minority that we are not going to get cloture. It is hard to comprehend that, but that is what they said. It would seem to me it would be in everyone's best interest to see if that, in fact, is the case today, if, in fact, we did get cloture, and the 30 hours could run and it would not interfere with the duties of the other Senators, except those who wish to speak. Postcloture, a Senator has up to 1 hour.

There are lots of things going on at home. This is election time, as we know. It appears to me, as I said earlier today, we have had so many code words. This is a filibuster. We were told yesterday there were 30 speakers on this amendment. Realistically, what amendment ever had 30 speakers? There won't be 30 speakers on this amendment, but there will be a lot of people moving around, stalling for time, which has happened now for 4 weeks on this bill.

I said yesterday, and I am beginning to believe more all the time, and it appears clear to me, that there does not seem to be any intention of either the White House or the Republican majority in the House or the minority in the Senate, of wanting to move this bill forward.

There is general agreement that the bill the Senators from Connecticut and Tennessee came up with is a bill we should have passed very quickly. There are problems that could have been resolved in the House and the Senate conference. For every day we spend talking about Iraq—and I think we should spend some time every day talking about Iraq and homeland security—it is 1 day we do not have to deal with the stumbling, staggering, faltering economy.

If we spend each day on issues focusing away from the economy and what needs to be done in the Senate, including doing something about terrorism insurance, doing something about a Patients' Bill of Rights, which the Presiding Officer worked very hard on—we need to do something on a generic drug bill. There was the fiasco that took place in Florida. Again, 2 years after the fiasco of all time with the elections, still nothing can be done because the House will not let us do anything. The energy conference is moving forward by tiny steps, but it is one of the few things happening.

It is obvious to me there is an effort to do everything that can be done so we do not focus on the economy. It is too bad. We can either formally come in later and offer the vote on the cloture motion set for tomorrow or do it today. But the offer is there.

For all the Senators worried about what is going to happen tomorrow,

they should understand—and I understand there are some on the other side who do not even care if they are here or not because they really do not need them on a vote because we have to try to get 60 votes. But that is OK; we will still do everything we can. On this side we are going to move forward on this bill. We will, as the leader indicated, work weekends, we will work nights, whatever it takes, to try to move forward on this bill. I am disappointed we are being told there will not be cloture on this until tomorrow.

That is, I repeat, only an effort to stall moving forward on this legislation.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I will respond to the distinguished Democratic floor leader by simply going back and reviewing the facts and setting out the obvious blueprint that will solve our problems. I remind my colleagues we have been on this bill for over 4 weeks largely because of the debate on the Byrd amendment, and not a minute of that time was wasted because we were convinced by the major premise of the Byrd amendment. In the Gramm-Miller substitute we deal with that problem by maintaining the power of the purse, which is the fundamental constitutional power of the Congress.

I am not complaining about the fact that we have spent the bulk of our time on an amendment that is still pending because the plain truth is we learned something "we" being Senator MILLER and I. We learned something. We concluded that Senator BYRD was right on and we changed our substitute. By the way, we have never voted on the Byrd amendment.

The plain truth is the great bulk of the time we have been on this bill we have been debating that amendment, and it is yet to be resolved.

I remind my colleagues that Senator THOMPSON, the ranking Republican on the committee, offered a simple amendment that said we ought not tell the President how to set up the White House. This amendment was partly controversial in terms of the President's National Security Adviser and his terrorism adviser. That amendment was, sure enough, adopted. But only after 6 days of delay on the part of our Democrat colleagues. And then there were other delays before it was ever added to the bill.

The problem is, they have delayed this bill, and not us. Everybody is entitled to their own opinion. They are just not entitled to their own facts. The weakness our colleagues on the other side of this issue have is that the facts are against them. What is the old deal in law? When the facts are against you, argue the law.

What is the current holdup? The President of the United States, working with a Democrat and a Republican, has spent 4 weeks listening to things that have been said and concerns that have been raised, starting with Senator