

I hope the Commission's report is a clarion call. Let's get our act together. Again, this is not a partisan issue. This should not instigate fighting with one another. We should just do it.

I wish the White House in their budgets had allocated more money. When people in the Senate, both Democrat and Republican, said, We need to do this, that, and the other, had the President said, Yes, sir, right on—but we do not have that. We do not have leadership on homeland security. That is what the Commission's report shows.

Being a great leader and being a strong leader does not just mean fighting wars overseas in this brave new post-September 11 world; it means tightening things up at home. The bottom line is simple: Why aren't we protecting our airplanes from shoulder-held missiles which we know the terrorists have? Why aren't we saying more than 5 percent of the big containers that come to our ports on the east coast, the west coast, the gulf coast, should be inspected to see if they might contain materials that could hurt us? Why aren't we doing more to protect the borders? My State of New York has a large northern border. They have not allocated the dollars, the bottom line is they do not have enough manpower at the borders to prevent terrorists from sneaking in. They are doing a great job with the resources they have, but Lord knows they don't have them. We are not doing any of these things.

I point out one other thing the Commission has mentioned—here, Congress is as much to blame as the White House—and that is the allocation of homeland security funds. The Commission is very strong on this issue. The moneys that go to police, fire, and the others who are our first responders—we learned in New York how valuable they were. The report today will show the number of people who died below where the planes hit the World Trade Center towers was few—too many, but few—because of the great job the police and the firefighters did. Yet we are treating that money as pork barrel.

My State has greater needs than, say, the State with the smallest population, Wyoming. Yet Wyoming gets much more money on a per capita basis. To the credit of the administration, that did not happen the first year we allocated homeland security money. Mitch Daniels, a true conservative, the head of OMB, says he does not want to waste these dollars. He is sending dollars to the places of greatest need. I might have wanted more dollars, but at least the dollars that were allocated were allocated fairly. But now we have slipped away from that. Frankly, we do not hear the voice of Tom Ridge, who was the successor as we created a new Homeland Security Department, saying, allocate this money fairly. We do not hear the voice of the President, and we do not hear the voices of the House and Senate.

This wonderful report is very critical of what our Nation is doing on homeland security. It is saying we are not doing enough in area after area. I hope and pray this report will be a wakeup

call. We do not want to be in the "what if" situation. God forbid there is another terrorist attack and the next morning we say: What if? What if we had done the job? What if the attack was by shoulder-held missiles? And we say: What if we had done the job. What if the attack was from ships and ports? We say: What if we had done the job on port security or on the rails? Or because someone got across our borders and shouldn't have? We do not want to be in a "what if" situation.

#### JUDICIAL NOMINATIONS

Mr. SCHUMER. Mr. President, my colleague from Michigan is here, and I know she will probably want to speak on the three votes on judges.

The first point I make is, I would much rather be debating the Homeland Security bill than these judges. Where are our priorities in this body? What are we doing? We have had weeks and weeks where many have called for bringing Homeland Security appropriations to the Senate. Instead, we have been debating all the political footballs. I know it is a Presidential election year, I know it is election season, but some things should have a higher calling.

On this particular issue, I make one point before yielding the floor to my colleague from Michigan. Anyone who thinks this is a tit-for-tat game at least misreads the Senator from New York. Were there bad things done on judges when Bill Clinton was President by the Republican-controlled Senate? You bet. But that does not motivate me in terms of what we ought to do in the future.

What motivates me is that in the issue of appointing judges—and I remind the American people that now 200 judges have been approved and 6 have been rejected. My guess is the Founding Fathers, given that they gave the Senate the advice and consent process, would have imagined a greater percentage should be rejected.

I am always mindful of the fact that one of the earliest nominees to the U.S. Supreme Court, Mr. Rutledge, from the neighboring State of the Presiding Officer, South Carolina, nominated by President George Washington, was rejected by the Senate because they didn't like his views on the Jay Treaty. That Senate, which had a good number of Founding Fathers in it—the actual people who wrote the Constitution, many of them became Senators the next year or two—didn't have any qualms about blocking a judge they thought was unfit.

Now all of a sudden when this body stops 6 of 200, we hear from the other end of Pennsylvania Avenue: That is obstructionist.

That is not obstructionist. That is doing our job. The Constitution didn't give the President the sole power to appoint judges. It was divided. In fact, for much of the Constitutional Convention the Founding Fathers thought the Senate ought to appoint the judges and only at the last minute did they say the President, with the advice and consent of the Senate.

This President—regretfully, in many instances—has not consulted the Senate. The two Senators from Michigan—they happen to be of a different party than the President but we know they enjoy working with the other party—were not consulted. I know it can be done. We have done it in my State of New York. We don't have a single vacancy in either the district courts or the Second Circuit because finally, after I said I was not going to allow judges to go through unless I was consulted, the White House came and consulted, and there is a happy result. All the vacancies are filled. The judges tend to be conservative, but they are mainstream people. I may not agree with them on a whole lot of issues, but they have all gone forward. In Michigan we have had no consultation.

Today when I vote against these three nominations, I am not just backing up two Senators from Michigan; I am defending the Constitution. That is what all of us who vote this way will do. Because for the President to say on judges, it is my way or the highway, no compromise, is just not what the Founding Fathers intended. It is not good for America. It tends to put—whoever is President—extreme people on the bench instead of the moderate people we need.

I regret that we have come to vote on these judges, but I have no qualms that I will vote and recommend to my colleagues that we vote against all three.

I suggest the absence of a quorum. The PRESIDING OFFICER (Mrs. DOLE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. REID. Would the Chair advise the Senator from Nevada what the status of the floor is at this time?

The PRESIDING OFFICER. There are 2 minutes remaining under morning business.

Mr. REID. I yield that time back. The PRESIDING OFFICER. Time is yielded back.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

#### NOMINATION OF HENRY W. SAAD TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 705, which the clerk will report.

The assistant legislative clerk read the nomination of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 11