

is not how FEMA should be deciding to distribute our tax dollars.

Then there is the other major issue of the distribution of FEMA dollars to those counties that did not have hurricane force winds. FEMA paid out \$29 million—and just last week FEMA Director Brown defended it—to Miami-Dade County, where the highest winds were 54 miles an hour. Hurricane velocity winds do not start until you get to 74 miles an hour.

I thank the chair of the committee, Senator COLLINS, who is in the Chamber with us, and Senator LIEBERMAN, who have acknowledged there is something that needs to be told here. They have started an investigation, and they are looking into these allegations.

So what do you expect is going on here? Well, that is what their investigation is going to get to the bottom of. I am looking forward to it.

As I speak, I am going to vote for Judge Chertoff. As I said to him last week, he is going to be the leader of this gargantuan Department. He needs to make sure the components of his Department are functioning as they should, because we need to fairly and efficiently distribute FEMA dollars that we appropriated. And we appropriated lots of them: \$13.6 billion. Those moneys need to address the issues that are plaguing these States such as mine, so that when this occurs in the future we will not have all of this trauma that our citizens are going through.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank and commend the Senator from Florida for his ongoing concern and interest in the operations of FEMA. At the Senator's request, the Homeland Security and Governmental Affairs Committee has initiated an investigation into the FEMA expenditures in his State as well as some other States where similar issues have arisen. We are working very closely with the Inspector General in conducting that investigation. I appreciate the Senator's interest in requesting the committee to conduct this investigation.

I note that the Senator's more recent concerns, in his discussions with Judge Chertoff, are yet another reason why it is so critical we get Judge Chertoff confirmed and in place. The Department of Homeland Security faces a myriad of management challenges, and we need a strong Secretary on the job as soon as possible. The hearing the committee held was almost 2 weeks ago. I think it is very unfortunate that we did not move ahead and confirm the nominee last week.

I think the Senator from Florida has given yet another example of some of the challenges Judge Chertoff will face. So I appreciate the comments of the Senator, my colleague from Florida. We look forward to continuing to work with him on this investigation and to improve the efficiency and effectiveness of FEMA.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, parliamentary inquiry: We are now on the nomination of Judge Chertoff?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. NELSON of Florida. Mr. President, would it be in order for this Senator to request 5 minutes to speak on an issue as in morning business?

The ACTING PRESIDENT pro tempore. The Senator can make that request by unanimous consent.

Mr. NELSON. Mr. President, I ask unanimous consent to speak as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### SOCIAL SECURITY

Mr. NELSON of Florida. Mr. President, it absolutely baffles me, this discussion going on about Social Security of which the President has laid out by sounding the alarm bell that something needs to be done, and yet the President has not come forth with a plan to address the fact that in 37 years, in the year 2042, Social Security will not be able to pay the full benefits, rather, 37 years in the future, would be able to only pay 73 cents on the dollar of Social Security benefits.

Where is the President's plan? The President has laid out that he wants to privatize Social Security with private accounts. Where is the President's plan? Why is there not a message from the White House to the Congress? I can suggest a reason as to why there is no plan: because basically the privatization plan does nothing for the solvency of Social Security when it needs it in 37 years and, instead, does the opposite by whacking benefits and increasing the national debt considerably, whether you look at a 10-year or a 75-year period, whatever one is calculating.

This Senator is not going to whack or cut Social Security benefits, nor is this Senator going to go with a plan that not only cuts benefits but also adds trillions of dollars to the national debt when we are running at a deficit situation where in excess of \$400 billion a year is spending in the red. And how do we get it? We go and borrow it. By the way, guess where we borrow it from. Mostly from banks in Japan and China. That doesn't sound too good from a defense posture of the country. This Senator is simply not going to support that. I will work with the President on the question of the solvency when it needs it, and we know it needs it in 37 years. But where is the President's plan? Unfortunately, I read in the morning paper that the President has decided that he is not going to send a plan. How can the President say, I have a plan, we have to do something about the solvency of Social Security, and not offer a plan?

What we need is a little common sense. What is happening is there is so

much resistance to this idea of privatization of Social Security that the White House is having a second thought about whether they should come forth with this plan, and that is why they are waiting to reveal it. If there is a good faith attempt to do something about the long-term solvency of Social Security, this Senator will definitely cooperate.

It was only because a Republican President, Ronald Reagan, and a Democratic congressional leader, Speaker Tip O'Neill, came together and said, we are going to solve the problem in 1982, we are going to solve the problem in a bipartisan fashion, and we are not going to play "gotcha" politics, and it is going to be a substantive solution—that was one of the finest moments of the Congress, coming together in bipartisanship to solve a major, thorny, highly risky kind of problem. The Congress and the executive came together and did that. But that was in an environment and attitude and atmosphere of genuine bipartisanship instead of this scoring of partisan points that seems to be done today.

I recommend that the White House come forth with its plan and do so in a bipartisan fashion, and then we can get the job done.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business and that the time not be deducted from the debate time on Mr. Chertoff's nomination.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

#### SOCIAL SECURITY

Mr. DURBIN. Mr. President, President Bush and many of his supporters in Congress are trying to convince the American people about the so-called Social Security privatization plan. They are arguing that there is going to be a bargain by borrowing \$2 trillion now instead of paying over \$10 trillion later in the shortfall on Social Security. Once you learn the reality of the President's Social Security bargain, you understand why Americans of all ages are unwilling to buy into this Social Security privatization scheme.

The \$2 trillion it would cost to transition to a privatized Social Security system would do absolutely nothing to solve Social Security's long-term funding challenge. The argument on the other side was being made yesterday by

the chairman of the Republican conference, Senator SANTORUM of Pennsylvania. He was on a television show on which I also appeared. He was confronted with the cost of the transition for privatizing Social Security. He said:

I disagree with that. I mean, you remember the old Fram Oil Filter commercial—"pay me now or pay me later." And if we don't do something now to put a down payment for young people so they have an opportunity to have a hope for something better than the system now will provide them, we are looking at huge tax increases down the line, big benefit cuts down the line, and huge deficits.

As you look at the actual costs involved with the transition under privatization, you understand why this is not the bargain that has been described. The President wants to take \$2 trillion out of the Social Security trust fund. He does this by saying we are going to let people invest in their own private accounts, as he calls them, with money out of the Social Security trust fund. Unfortunately, he has made no suggestion whatsoever on how we are going to pay back the amount of money being taken out of the Social Security trust fund. In fact, this taking money out of the Social Security trust fund is not going to strengthen it; it is going to weaken it.

Look at the President's proposal and what it means—the Social Security shortfall, the cost of other administration policies over the next 75 years. Presently, there are key dates for Social Security; i.e., the date when benefits paid out exceed tax revenues coming in. Under current law, it is 2018. Now we have a buildup, a surplus in Social Security, so it will continue to pay out.

Under the President's proposal, benefits would exceed tax revenues in 2012. Benefits exceed all revenues in 2028 under current law and, under the President's proposal, in 2020. The year when the trust fund is exhausted is 2041 by the current law. Under the President's privatization proposal, it is 2031.

What the President has proposed is no way to strengthen Social Security; it weakens it. This argument by Senator SANTORUM that we either incur this debt today of \$2 trillion or face \$10 trillion in the future ignores the obvious: that we would incur the debt today of \$2 trillion and the debt of \$10 trillion in the future.

The President presents his idea to privatize Social Security as if it is a solution to the long-term funding challenge. As I have shown with the chart, it is not. Based on the few details we have seen about the President's privatization, adding private accounts would accelerate the date in which benefit payouts exceed tax revenues. This surplus that we will continue to have until 2018 would disappear by 2012 under the President's proposal.

So why are we doing this? People have said: You Democrats are criticizing a lot; where is your plan? If we are going to start with the plan, we

ought to start with some basic agreement, and it ought to be this: Whatever you put on the table should make Social Security stronger, not weaker. It should not have a dramatic cut in the benefit payments being made by Social Security. Whatever you put on the table should not incur a debt of many trillions of dollars for future generations. Sadly, the President's proposal fails on every single one of those suggestions. It does not strengthen Social Security. It cuts benefits dramatically—up to 40 percent—according to a Boston College survey that came out last week, and it puts \$2 trillion more debt on younger people.

So the idea of being able to invest a little bit more of your money in something that may—if your investments are wise—mean more return doesn't hold out much hope for a younger generation that sees the debt of America being driven up dramatically by the President's proposals.

In exchange for making the Social Security trust fund financing worse, the President wants to borrow \$2 trillion. This sea of red ink shown on this chart is the story of the Bush economic policy. When the President came to office, we were actually generating a surplus in the Treasury. And a surplus in our budget meant we weren't borrowing as much from Social Security; we were making it stronger.

So the plan to strengthen Social Security was there when the President arrived, but the President said: I have a better idea. Let's stop doing things the way we did in the past and let's give tax cuts primarily to the wealthiest people in America. That will really pay off.

Look what it paid off in—the biggest deficit in the history of the U.S. At a time when many of us warned the administration you cannot really look into the future and say with any certainty what America will face, be careful about cutting taxes, the administration said: Step aside, we have a majority and we are going to pass it. If you don't like it, just step aside.

So a lot of us watched as these tax cuts were enacted. Look at the deficit projected from the tax cuts. Now the President wants to make it worse. The President is proposing adding to this national debt by privatizing Social Security and not paying for it. The President is suggesting adding even more debt to future generations and doing so by making the tax cuts permanent.

Now, people like tax cuts. That is appealing. Every politician would like to get up before every audience and say I am going to cut your taxes and get a little round of applause. Then you look at it and ask, is that smart to do? The first obvious question is: Under President Bush's tax cuts, who wins and who loses?

I can tell you what the numbers show. Of the tax cuts that will take effect this year, 90 percent will go to people making over \$200,000 a year. Over 50 percent of the new tax cuts will go to

people with incomes of more than a million dollars a year. Half of the tax cuts that will take effect this year will go to people making over a million dollars a year.

At a time when the budget cannot find enough money for health care, particularly for the elderly in nursing homes and for children in poor families with mothers working two or three low-wage jobs, this President wants to make his tax cuts of hundreds of millions of dollars to those making over a million dollars a year permanent. At a time when we are closing down Amtrak, when this administration is not properly funding veterans health care, they want to make tax cuts to people making over a million dollars a permanent.

Well, it is a program that hasn't worked to this point. Over the last 4 years, we have seen our deficits get dramatically worse. The President talks about the Social Security funding shortfall over an eternity. It will be interesting to take a look at what, first, the cost of privatizing Social Security will be. The amount provided in the President's budget for Social Security is zero. That is why the President's proposal has exactly that much credibility—zero.

If the President really believed in his privatization plan, he would put it in the budget. Why didn't he? Because it costs so much money; \$754 billion is the lowest estimate for the first 10 years of the President's plan.

Look at the next 10; it is \$4.5 trillion. We talk about trillions of dollars here in Washington. The President won't talk about this at all. He will not include the cost of his privatization plan in the budget because it costs too much. He cannot afford to pay it.

Take a look at, over the long haul, what it means. If he makes his tax cuts permanent through 2078—a long period of time—this is how much money will be taken out of the Treasury, \$2 trillion. Then look at the Social Security shortfall. It is one-third of that amount. If the President decided, here is a radical idea, we are not going to give tax cuts to people who make over a million dollars a year—you seem to be doing OK in America; this country has treated you pretty nicely, so we are not going to give you a tax cut—if we just said that and put the money in Social Security, it would be strong.

Maybe there are other things we could do to make it even stronger. But this administration is bound and determined to give these tax cuts to the wealthiest people in America.

I think when you take a look at this, you also have to remember something else. Who owns America's debt? Who holds America's mortgage? Who are the creditors we have to worry about? It turns out, it is foreign countries, primarily China and Japan. The U.S. economy is now increasingly dependent on a handful of foreign central banks for our economic stability and security. It is not only shortsighted to

come up with privatization plans that you do not pay for, tax cuts for wealthy people that you don't pay for; it is shortsighted to be even more dependent on foreign countries that hold our debt.

Listen to this. Last October the chief currency analyst at MG Financial Group, one of the oldest companies in the retail foreign exchange industry, said as follows:

The stability of the bonds market is at the mercy of Asian purchases of U.S. treasuries.

Let me translate. What if the mortgage on your home was in the hands of someone who on any day could call you and say "pay it all off"? It is not like 15, 20, or 30-year mortgages but a mortgage they could call in tomorrow. What if they started worrying about your financial circumstances? What if they worried that you would not have a paycheck next week or somebody was sick in your home? Will they start worrying about whether you are going to make the payments? Getting nervous, they could call in that debt. It can happen. It can happen in this world. In the world situation, when they lose confidence, as this gentleman is suggesting, in the U.S. economy and the U.S. budget, we become even more vulnerable, and foreign countries such as China and Japan can say, all right, we will not call in your mortgage, we will just raise the interest rate. What will we do then? There is no place to turn. They can say, incidentally, we are not that confident about your dollar. We are going to start saying you have to convert your dollar into euro dollars or some other currency.

All of these factors complicate our lives dramatically. The more we are in debt, the more we are dependent on foreign countries. These countries, coincidentally, export to the United States dramatic amounts of goods and services that cost us valuable jobs in America. It is no coincidence; Japan, China, Korea, other Asian countries that hold our debt are also holding America's workers by the throat. They understand they have us.

So what does this conservative administration, this Bush administration propose? More debt, more dependence, more power to our creditors, such as China and Japan. How can that make America any stronger? In fact, it makes us weaker.

I sometimes wonder when I look at the long-term view whether people in the White House are stepping back to look at the reality of the world we live in; that here we are with a supplemental appropriation of \$21 billion to fight the war in Iraq—and I will vote for that and every penny for which this administration asks. If it were my son or daughter, I would want them to have everything they need to be safe in this war. But at the same time, we are so dependent on foreign oil, buying it at record levels because we do not have a basic policy of energy conservation in America.

A couple weeks ago, my wife and I bought a new hybrid car, a Ford. We

are driving it around, getting used to it, hoping it works as promised. Why is it that we are not pushing for more fuel-efficient vehicles so there is less dependence on foreign oil? At the same time we are appropriating money to fight this war, we are sending money hand over fist to these oil-producing countries that, through the backdoor, are sending money to support terrorism. Does that make any sense? Why would we not have an energy policy that also is about the security of America, which means an energy policy that reduces our dependence on foreign oil. Why don't we have a budgetary policy that reduces our dependence on foreign lenders, such as China and Japan?

Exactly the opposite is coming out of this administration. It is totally upside down. It lacks common sense.

Holdings of Treasury bonds by Japan were at \$722 billion last October. China's rose to \$191 billion. Steven Roach, the chief economist at Morgan Stanley, said:

If all we have funding our current account imbalance is the good graces of foreign central banks, we are increasingly on thin ice.

So this bargain that the administration has proposed in privatizing Social Security drives us deeper in debt, which the President will not pay for, a debt for future generations and a debt held by foreign governments, and we become their debtors and at their mercy.

We have to understand this. The President's proposal makes Social Security's long-term finances worse. It worsens our short- and long-term budget outlook by trillions of dollars. It leaves our grandchildren to pay higher taxes on our national debt. And it makes us more dependent on foreign countries, such as Japan and China. That is not a good proposal for America.

Let me tell you what I think we should do. I have lived through this before. As a new Member of the House of Representatives back in the 1980s, I no sooner arrived in town and they said Social Security is in trouble; we need to do something, and we need to do it now. I thought to myself: I got here just in time.

So President Ronald Reagan, the leading Republican, turned to Speaker of the House Tip O'Neill, the leading Democrat, and said: Mr. Speaker, let's do this together. Let's create an honest bipartisan commission and let them come back with some proposals.

Alan Greenspan, known as a Republican but respected as an economist, came forward and headed up the Commission. They came up with a list. They said here is what you have to do to Social Security to keep it strong for a long time. Take your pick, but you have to do some of these things and do them now, in the early 1980s. It was a big debate. The debate went on for a long time.

Were we going to increase the age by which people could retire on Social Se-

curity? Would we increase the payroll tax? Would we cut benefits? None of it was really that appealing. The idea of Social Security missing a payment was totally unacceptable. So we came together, Democrats and Republicans. We agreed. We passed the bill. President Reagan signed the bill.

What happened as a result of our action? We bought 58 or 59 years of strength and solvency in Social Security. And that is exactly what we should do now. Set aside this privatization plan. It is headed nowhere. The American people are not buying it. Instead, let's do this on a bipartisan basis. Let the President propose a real, honest bipartisan commission and let them come up with honest, common-sense ways, when played out over 40, 50 years, that will make Social Security stronger.

We rose to that challenge—I was here when it happened—and we can do it again. But we need to detoxify this debate, pull the ideologues, people who have these extreme views about getting rid of Social Security, get them out of the picture. We do not need them in the room. Social Security needs to be here for future generations. Both parties are usually committed to that goal, and they should be committed to it today.

I suggest the President's privatization plan is a nonstarter. It is a plan that does not have the appeal that he thought it would. I am sure there were some excited about it initially. It just is not getting off the ground.

Republican leaders, such as the Speaker of the House, said last week in a front page interview in the Chicago Tribune that you cannot force an idea such as this down the throats of the American people. I think he is right. I think he has recognized the reality. And I think he is willing, on a bipartisan basis, to look at alternatives. That is the way we should all approach it—a bipartisan approach that truly strengthens and does not weaken Social Security, a bipartisan approach that does not make wholesale cuts in benefits and add dramatically to America's debt. That is the way we should approach this issue.

Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LEVIN. Mr. President, let me begin by saying I intend to vote to confirm Judge Chertoff to be Secretary of the Department of Homeland Security based on what I know of him. What deeply troubles me is that information relevant to his confirmation has been arbitrarily denied to the Senate by the Justice Department.

In the course of preparing for the Homeland Security and Governmental Affairs Committee hearing on Judge Chertoff's nomination, a document came to my attention bearing on Judge Chertoff's responsibilities when he headed the Justice Department's Criminal Division. The document was recently released by the FBI in response to a Freedom of Information Act, or FOIA, request by the American Civil Liberties Union. It is dated May 10, 2004. It indicates that FBI personnel working at the Guantanamo detention facility had major concerns about interrogation techniques used on detainees from Afghanistan by Department of Defense personnel, which techniques "differed drastically" from traditional methods employed by FBI personnel, DOD and FBI techniques differed so drastically that FBI agents decided they had to "step out of the picture" so as not to participate in DOD-led interrogations.

Department of Defense interrogation techniques have been the focus of a number of investigations into detainee abuse allegations, including abuses graphically depicted in the photographs from Abu Ghraib prison. MG George Fay, who investigated detainee abuses by military intelligence personnel at Abu Ghraib, found that interrogators at that prison were improperly using harsh interrogation techniques that came from Guantanamo, including stress positions, isolation, nudity, and the use of dogs to "fear up" detainees.

The report of the panel chaired by former Secretary of Defense James Schlesinger found that these "more aggressive" interrogation techniques developed at Guantanamo "migrated" to Afghanistan and Iraq and contributed to widespread abuses.

The FBI document about which I am talking today makes clear that concerns about DOD's interrogation techniques in use at Guantanamo, and so strenuously objected to by FBI agents, started at least as early as the fall of 2002, before the abuses occurred at Abu Ghraib and elsewhere.

The document at issue indicates that FBI agents communicated regularly with Justice Department officials, including senior officials in the Criminal Division headed by Mr. Chertoff before he was appointed to the Federal bench. The FBI agents' communications expressed their deep concerns about techniques employed by DOD personnel.

Let me read from the document at issue that we will be referring to this afternoon which is displayed on the chart beside me. It is from an FBI e-mail to T.J. Harrington from an official whose name has been redacted. It reads in part as follows:

I went to GTMO with blank—

That is the first of many redacted items on this document.

I went to GTMO with blank early on. We discussed the effectiveness of blank with the supervisory special agent. We, BAU—

Which is the Behavior Analysis Unit—

and ITOS1 the International Terrorism Operations Section 1—had also met with Generals Dunlevey and Miller explaining our position, law enforcement techniques versus the Department of Defense. Both agreed the Bureau has their way of doing business and the DoD has their marching orders from the Sec Def.

Although the two techniques differ drastically, both generals believed that they had a job to accomplish . . . In my weekly meetings with the DOJ, we often discussed BLANK techniques and how they were not effective or producing Intel that was reliable.

Then there is a series of blanks, which appear to be the individuals' names which have been redacted or withheld from release, with the abbreviation "SES" after the names that were blotted out, indicating that the individuals were members of the Senior Executive Service. The document then says, and these are the critical words, that all of those SES employees were from the Department of Justice's Criminal Division and that they "attended meetings with the FBI." It goes on to say, "all agreed blank were going to be an issue in the military commission cases. I know blank brought this to the attention of blank."

Now, it is those redactions, those names, and that information which has been deleted, including the names of the senior officials in the Criminal Division of the Department of Justice participating in meetings with the FBI agents, which thwart the Senate in its constitutional role of deliberating on Judge Chertoff.

Judge Chertoff was head of the Criminal Division from April of 2001 until June of 2003. It is the division that he headed whose members are referred to here but whose names are blotted out so that we are unable to know who they are and we are unable to talk to those members of Judge Chertoff's Criminal Division.

On February 4, 2005, a little more than a week ago, Senator LIEBERMAN and I wrote to FBI Director Robert Mueller regarding this document. A copy of that letter is displayed next to me. This is what Senator LIEBERMAN and I wrote:

We ask that an unredacted version of this three-page document be provided to the Office of Senate Security where we and staff members with appropriate clearance can review it. Please provide an unredacted copy . . . by no later than 4 p.m. on Friday, February 4, 2005. If you will not provide a copy of this document, please provide a legal justification for doing so.

In a letter dated February 7, the Department of Justice, not the FBI to whom we wrote but the Department of Justice, wrote back denying our request. The Justice Department claimed that an unredacted copy would not be provided to us because it contained, and it is referred to in this letter next to me, "information covered by the Privacy Act, . . . as well as deliberative process material."

The Justice Department's reasons for denying the request of Senator LIEBERMAN and myself are not just unfounded and unacceptable. They are in-

credible. They are extreme. The Privacy Act is designed primarily to prevent the U.S. Government from disclosing personal information about private individuals who have not consented to that disclosure. It is not intended to be a means of concealing the names of public officials engaged in Government conduct funded with taxpayers' dollars.

The Department of Justice's invocation of the Privacy Act to deny the Senate relevant information regarding a nomination before the Senate is an abuse of the Privacy Act and a dangerous precedent. Denying Congress documents relevant to our functions, if sustained, would effectively end most congressional oversight because Government employees are named in thousands of documents which Congress relies on in carrying out responsibility.

Senator LIEBERMAN and I have written to Attorney General Gonzalez requesting that he reconsider the decision to withhold this information.

When I asked Judge Chertoff about this document at his nomination hearing on February 2, he could not recall discussions between FBI and Department of Justice Criminal Division officials concerning Department of Defense interrogation techniques at Guantanamo. He stated:

I don't recall having any discussion about techniques that the Defense Department was using in Guantanamo, other than simply the question of whether interrogations or questioning down there was effective or not.

Judge Chertoff could not say who were the Criminal Division officials whose names had been redacted from the document which was up here a moment ago. Nor could he even confirm that the discussions referred to in the document between people from his Criminal Division and the FBI and Defense Department officials occurred during his tenure as head of the Criminal Division.

If Judge Chertoff does not know that these discussions took place or who in his division might have engaged in these discussions or when they took place, does that not end the matter? If he is unable to say that those people whose names are blotted out talked to him or anybody in their supervisory capacity who supervised them, does that not bring this matter to an end? Of course it does not, and it cannot.

By denying the Senate access to the names listed in the document, the Department of Justice has prevented the Senate from finding out that information so we might refresh Judge Chertoff's recollection about the conversations referred to in the document, which involves senior Criminal Division personnel that he was the head of; conversations with the FBI and Department of Defense personnel regarding DOD interrogation techniques at Guantanamo.

Now, if the names of the Criminal Division personnel were known to him, which they are not—they are obviously blotted over—or if they were known to

us, surely we could ask those persons if they discussed these matters with people who are higher up in the Criminal Division, their supervisors, including possibly with the head of the Criminal Division, Judge Chertoff. We clearly have a right to find out their names to ask them the same relevant questions that we could ask them if their names were not redacted.

If we knew the names, in other words, surely it is relevant, it is appropriate for the Senate to ask these members of Judge Chertoff's Criminal Division, did you discuss these matters that you overheard and were participating in with your supervisors at the Criminal Division? Did you ever bring these to the attention of now Judge Chertoff?

If the names were not redacted, if it is appropriate for us to ask the names on that memo those questions, clearly we have a right to find out who they were so we can ask those same relevant questions.

By its contorted reliance on the Privacy Act, the Justice Department is denying the Senate information relevant to our consideration of whether to give our consent to this nominee. Our constitutional mandate is clear. The Justice Department's decision to cover up this information is deeply disturbing. Not only is the Senate being thwarted, the American public is being denied relevant information. If this misuse of the Privacy Act is not resisted, congressional oversight of our governmental activities will be controlled by the executive branch that we are supposed to oversee. We cannot allow the Department of Justice's action to stand unchallenged.

The Congress obtains thousands of documents from the executive branch as part of our oversight responsibility, and we must. We had an investigation in the Permanent Subcommittee on Investigations of the operation of the Comptroller of the Currency. Thousands of documents were obtained with names of Government employees and we reached a conclusion that one of those employees had worked so closely with one of the banks that was being investigated that, in effect, he had abdicated his responsibility as a Government employee to oversee that bank he later took a job with.

The same thing has been true with the Boeing investigation. It is true with hundreds of investigations. We must be able to obtain Government documents, and we do obtain Government documents, all the time in Congress as part of our oversight responsibility. If the names of Government employees who are paid with taxpayer dollars are redacted, are not available to Congress, because allowing their names to be in those documents violates their privacy, this will wipe out the oversight responsibility of the Congress.

Senator LIEBERMAN and I have sought this particular document and we have done so because the document

is relevant to this confirmation process. The refusal of the administration to produce this unredacted document thwarts our constitutional responsibility. There seems to be something ingrained in the administration to thwart congressional oversight, particularly on the issue of detainee abuse. The history of this detainee abuse is important as a backdrop to what my point is this afternoon.

A specialist by the name of Joseph Darby courageously came forward in the Defense Department in January of 2004 with allegations and photos of terrible abuses at Abu Ghraib. The administration did not inform Congress of the existence, the nature and the scope of these allegations and photos until April 28, almost 5 months later in 2004.

They did come forward and notify Congress because that is the day the pictures were aired on a major network news program. The Congress only learned of the report of Major General Taguba who investigated the allegations of abuse by military police at Abu Ghraib between January 31 and March 12, 2004, after his report was leaked to the press in early May of 2004. We did not learn of White House Counsel Gonzales's memo of January 25, 2002, advising the President that the protections of the Geneva Conventions were "obsolete" and "quaint," to use his words, until that memo was obtained by the press in mid-May 2004.

We did not learn of the August 1, 2002, memo by the Office of Legal Counsel on his novel interpretation of the anti-torture statute, the so-called torture memo, until it was obtained by the press in early June of 2004. That was the memo that defined prohibited torture extremely narrowly; for example, that physical pain would have to be equivalent to organ failure, impairment of bodily functions, or death to count as torture under the anti-torture statute.

We now know of a second Office of Legal Counsel opinion from around the same time as the August 1, 2002, torture memo, which analyzes the legality of specific interrogation techniques. That memo has still not been made available to Congress.

The Armed Services Committee of the Senate made a standing request on May 13, 2004, in a letter from Chairman WARNER to Secretary Rumsfeld, for "all relevant documentation" regarding the allegations of prisoner abuse and for "all legal reviews and related documentation concerning approval of interrogation techniques."

The response to date can only be considered slow and partial.

The Defense Department has engaged in considerable foot-dragging in getting to Congress the findings of its investigations into key aspects of the detainee abuse issue. Although the Department of Defense at one point estimated that the report of General Formica regarding abuse allegations against Special Operations Forces in Iraq would be ready last August, and

this report was briefed to the Secretary of Defense over a month ago, only late last Friday afternoon did the Armed Services Committee receive this report. We have yet to receive the report of Navy Inspector General Vice Admiral Church in the Department of Defense interrogation techniques in Guantanamo, Afghanistan, Iraq, and elsewhere. The Defense Department initially estimated that this report would be ready 6 months ago. The Department's slow-rolling has delayed additional public hearings on the detainee abuse issue.

It is astonishing to me that only after becoming aware of the allegations of detainee abuse at Guantanamo contained in the documents produced by the FBI under this ACLU FOIA request did the Department of Defense direct that an investigation into those allegations be initiated.

The FBI documents that have been released under the FOIA request, although redacted, nonetheless describe the FBI's battles during 2002 and 2003 with Department of Defense commanders at Guantanamo regarding the use by the Department of Defense of "aggressive" and "coercive" interrogation techniques. In response to an FBI internal inquiry, allegations of detainee mistreatment at Guantanamo surfaced during the summer of 2004. This led the Bureau's Inspection Division in July of 2004 to contact all employees who served at Guantanamo after September 11, 2001, and request any information regarding detainee mistreatment at that facility.

FBI employees' responses to the FBI Inspection Division's request relating to Guantanamo indicate that FBI personnel repeatedly raised concerns regarding Department of Defense interrogation techniques, including with Department of Defense commanders at Guantanamo from late 2002 into mid-2003. One e-mail, dated May 10, 2004, described how FBI officials raised their concerns with General Dunlavey, who was in charge of interrogation operations until October 2002, and with General Miller, who was commander of the facility from October 2002 until March of 2004. In these discussions the FBI officials were told:

DOD has their marching orders from the Sec Def [Secretary of Defense].

The agent adds:

Although the two [agencies'] techniques differed drastically, both Generals believed they had a job to accomplish.

Another e-mail, dated December 9, 2002, states that it has two attachments: a description of an interrogation matter raised with the commanding general at Guantanamo, presumably General Miller, and second:

. . . an outline of the coercive techniques in the military's interviewing tool kit.

The FBI agent concludes by saying that he will bring back to headquarters a copy of the military's interview plan for an unnamed detainee, saying, "You won't believe it!"

The responses to the FBI's internal inquiry show that FBI officials had many objections to DOD interrogation techniques. In his confirmation hearing, Judge Chertoff suggested that FBI and DOD differences regarding interrogation techniques at Guantanamo might have related to whether Miranda warnings were to be provided, but that was not the case. FBI agents had official guidance not to provide to detainees at Guantanamo Miranda warnings. The differences between the two agencies' methods were different than that, and they went much deeper.

Other FBI documents produced under the FOIA request show that agents complained about the effectiveness of DOD's methods for producing reliable intelligence compared to the FBI's interviewing techniques. One agent reported telling DOD officials that the intelligence the Department of Defense was producing was "nothing more than what FBI got using simple investigative techniques." Another FBI official complained that when an agent would begin to develop a rapport with the detainee, "the military would step in and the detainee would stop being cooperative."

Another major FBI concern was that Department of Defense interrogators were impersonating FBI agents. In one e-mail dated December 5, 2003, an FBI agent complained that DOD interrogators had impersonated FBI agents in attempting to produce intelligence. The FBI agents expressed a concern that should this detainee's story ever be made public, the FBI would be left "holding the bag" because it would appear that "these torture techniques were done [by] 'FBI' interrogators."

A couple of the FBI e-mails challenged Defense Department officials' public statements in 2004 regarding Department of Defense methods of interrogation used at Guantanamo. For example, one e-mail dated May 13, 2004, reacts to statements of MG Geoffrey Miller, who at that time had moved from commanding the Guantanamo facility to Iraq, where he was in charge of all detention facilities, including Abu Ghraib. This is what that e-mail said:

Yesterday . . . we were surprised to read an article in Stars and Stripes in which General Miller is quoted as saying that he believes in the rapport-building approach. This is not what he was saying at Gitmo when I was there—redacted—and I did cartwheels. The battles fought in Gitmo while General Miller was there are on the record.

Constant battles between the FBI, part of the Department of Justice, and the Department of Defense officials at GTMO.

The FBI agents' responses to the Inspection Division's request regarding Guantanamo refer to other documents reflecting the FBI agents' serious concerns over Department of Defense interrogation techniques. Among the documents cited are a lengthy "electronic communication" drafted by the FBI's Behavioral Analysis Unit. That

communication is dated May 30, 2003. It contrasts the Bureau's interrogation methodology with that of the Department of Defense.

Another document is an electronic communication by the FBI's Military Liaison and Detention Unit in November of 2003:

. . . as to FBI's disapproval—redacted—regardless of whether they [those are the Department of Defense interrogation techniques] were approved by the Deputy Secretary of Defense.

Another document is a "must read" electronic communication from the FBI's Miami division.

A December 2003 e-mail refers to a request by the Military Liaison and Detention Unit that:

. . . information be documented to protect the FBI [because of their] longstanding and documented position against use of some of DOD's interrogation practices. . . .

Either these documents remain unreleased to the public or, if released, their content has been almost entirely redacted.

Reflecting the position of the documents I referred to is a May 19, 2004, memo to all divisions from FBI General Counsel Valerie Caproni. This memo states that:

Existing FBI policy . . . has consistently provided that FBI personnel may not obtain statements during interrogations by the use of force, threats, physical abuse, threats of such abuse or severe physical conditions, and that:

no interrogation of detainees, regardless of status, shall be conducted using methods which could be interpreted as inherently coercive, such as physical abuse or the threat of such abuse to the person being interrogated or to any third party, or imposing severe physical conditions.

This memo from the FBI General Counsel continues as follows: that FBI personnel who participate in interrogations with non-FBI personnel shall comply with FBI policy at all times, and specifically:

FBI personnel shall not participate in any treatment or use any interrogation technique that is in violation of these guidelines regardless of whether the co-interrogator is in compliance with his or her own guidelines.

Accordingly, the guidance to FBI personnel was to remove themselves from the situation if the interrogation is being conducted in a manner not compliant with FBI policy.

In response to the FBI Inspection Division's request, several FBI agents reported observing "aggressive treatment" of detainees at Guantanamo. One agent reports witnessing on a couple of occasions detainees "chained hand and foot in a fetal position on the floor, with no chair, food, or water."

This FBI agent describes how often-times these detainees had urinated or defecated on themselves, having been left in this position for 18 or 24 hours or more. One detainee subjected to these techniques had apparently been "literally pulling his own hair out throughout the night." The agent speculated that these techniques were being used by "the military, govern-

ment contract employees" and a third group whose identity has been redacted.

The FBI documents indicate that Bureau officials intended to notify the Defense Department regarding the FBI Inspection Division's findings regarding Guantanamo abuse allegations. A summary of that internal inquiry states that 26 of the agents who responded to the Inspection Division's request said they had observed some form of detainee mistreatment by non-FBI personnel.

After reviewing these statements, FBI General Counsel Valerie Caproni deemed 17 of these incidents to involve "appropriate DOD-approved interrogation techniques." The remaining nine were determined to require followup interviews. The summary states that the FBI Inspection Division was to prepare a report based on those followup interviews, to be forwarded to General Counsel Caproni, who would, in turn, notify the Defense Department.

It is not clear whether this report was ever prepared or provided to the Defense Department. If it does exist, the Defense Department has not provided it to the Senate Armed Services Committee.

In addition, other FBI documents released under the FOIA request include a partially redacted letter dated July 14, 2004, from Thomas Harrington, who served as the head of the FBI team at Guantanamo, to MG Donald Ryder, who is commanding general of the Army Criminal Investigation Command, detailing highly aggressive interrogation techniques at Guantanamo. The incidents witnessed by FBI agents as early as the fall of 2002 include what appeared to be a female interrogator squeezing a male detainee's genitals and bending back his thumbs and the use of a dog to intimidate a detainee. Details of a third incident were redacted from the letter, but according to the press, the letter describes a prisoner gagged with duct tape covering much of his head to prevent him from reciting from the Koran. Another incident involved a detainee suffering from extreme mental trauma after being kept in an isolation cell flooded with lights for 3 months.

The Harrington letter indicates that these incidents and other FBI concerns were discussed with two officials in the Department of Defense's General Counsel's Office in mid-2003. Despite the Armed Services Committee's standing request for "all relevant documentation relating to the prisoner abuse issue," the committee was not told by the Defense Department of receiving the Harrington letter last July, nor have we been informed regarding what actions the Department took in response to these allegations.

What the documents produced under the FOIA request indicate is that the administration's policies on the meaning of torture and the legality of specific interrogation techniques had opened the door to abuses. The document that Senator LIEBERMAN and I

have sought in the course of Judge Chertoff's nomination proceedings shows clearly that the FBI was raising its concerns about DOD interrogation techniques as early as the fall of 2002.

That would be a few months after the Justice Department's Office of Legal Counsel issued its August 1, 2002, memo interpreting the Federal antitorture statutes.

The December 1, 2002, memo by Secretary Rumsfeld put the stamp of approval on interrogation techniques that went beyond those that were in existing Army doctrine, and these were for use in Guantanamo. These included stress positions, isolation, deprivation of light, auditory stimuli, 20-hour interrogation, nudity, and exploiting detainees' phobias such as the fear of dogs.

One month later, Secretary Rumsfeld rescinded his approval of those techniques. He ultimately approved, in April of 2003, a narrower set of interrogation techniques. Regardless of which memo was in effect at the time of the FBI memo, Congress needs to find out whether the alleged mistreatment reflected the more aggressive DOD-approved interrogation techniques temporarily authorized for Guantanamo in December of 2002, or went beyond even those.

The concerns that the FBI expressed to the Defense Department were classified. But reports of abusive practices in Guantanamo were leaked to the press. The New York Times article from November of 2004 reported on a confidential International Committee of the Red Cross report which found that the highly refined system for the detention and interrogation of detainees at Guantanamo was "tantamount to torture." The article also states that the report, based on an ICRC visit to the facility the previous June, notes incidents of detainees being subjected to loud, persistent music, prolonged cold, and "some beatings."

The New York Times article dated January 1, 2005, cited anonymous interviews with military officials who participated in interrogations at Guantanamo, confirming the use of the same kinds of aggressive interrogation techniques which the FBI agents reported. These techniques reportedly included shackling inmates for hours, leaving them to soil themselves, or subjecting them to loud music. Again, as the reports of General Fay and the Schlesinger panel concluded, it was these aggressive techniques in use at Guantanamo which migrated, in their words, to Afghanistan and Iraq that contributed to the occurrence of detainee abuse there.

It was not just the FBI that objected to those techniques. We recently learned of a June 2004 memo written by Defense Intelligence Agency Director VADM Lowell Jacoby to Under Secretary of Defense for Intelligence Stephen Cambone advising him that DIA interrogators had been threatened by U.S. special operations forces, in-

structed not to leave the compound, and ordered not to talk to anyone in the United States when the DIA personnel observed and sought to document and report that they had observed those personnel physically abusing detainees during an interrogation in Iraq.

The Jacoby memorandum is another example of how this Congress has not been kept apprised and is only finding out after the fact about the depth and breadth of the allegations of detainee abuse.

That is totally unacceptable and should energize the Congress. But what should doubly energize all of us is when the Department of Justice denies us information relevant to our constitutional responsibilities, particularly after there has been a specific request for that information.

My purpose in coming to the floor this afternoon is to alert the Senate to this direct challenge to our ability not only to perform our confirmation responsibilities but our ability to perform our oversight function so essential to the system of checks and balances that serve as a brake on the powers of the executive branch regardless of who is in control of the executive branch.

It is not the first time the administration has asserted broad new powers to withhold information from Congress. A broad claim of executive power was made in the letter to Senator WARNER and me from the deputy general counsel of the Department of Defense on June 15, 2004. The letter referred to "the President's constitutional authority to withhold information the disclosure of which could impair foreign relations, [or] national security, [or] the deliberative process of the Executive."

Presidents traditionally claim the constitutional authority to assert executive privilege when personally determining that it is necessary to do so to protect their ability to receive candid advice from senior officials in the executive branch.

But that is not the issue here.

The privilege asserted by that Department of Defense letter that Senator WARNER and I received is not limited to cases involving Presidential deliberations and advice given to the President himself. That letter asserts the power to make unilateral decisions to withhold documents relating to foreign relations, national security, or deliberations within all parts of the executive branch.

That is a breathtaking claim which must be resisted—resisted on a bipartisan basis—by any Congress serious about the oath we have taken to defend the Constitution.

That Defense Department letter is a bald assertion of a privilege whereby executive branch officials can withhold anything from Congress that those officials, in their sole discretion, determine to be sensitive, embarrassing, or which make such officials uncomfortable. Congress insisted on access to

documents of this kind in the past because they are essential to the conduct of our oversight functions.

The document withheld from us in the confirmation matter before us goes beyond any previous assertion by any administration, as far as I can determine. There has been no claim of executive privilege here. The document itself has no bearing on any advice given to the President by anybody.

All of us should object to the withholding of the complete May 4, 2004, FBI memo which refers to the discussions at which members of the Justice Department's Criminal Division were present involving abuses at Guantanamo, when Judge Chertoff was head of the Criminal Division.

The Department of Justice's use of the Privacy Act takes the efforts to thwart congressional oversight to a new extreme. It is the latest manifestation of the executive branch's determination to seize any crumb of justification to prevent Congress access to executive branch documents relevant to carrying out our constitutional responsibilities of confirmation and oversight.

Congress should not sit idly by while the executive branch asserts sweeping authority to frustrate Congress's exercise of our constitutional responsibility. Broad executive branch assertions of privileged information and distortion of the Privacy Act threaten to reduce the Senate role in advising and consenting on senior level appointments to an exercise of rubberstamping the administration's nominees. The Senate should assert its constitutional power to get information relevant to the confirmation process and to our oversight responsibilities.

We have not carried out our constitutional oversight responsibilities, as far as I am concerned, in the area of detainee abuse as evidenced by the fresh revelations of abuse allegations in Iraq, Afghanistan, Guantanamo, and elsewhere.

Those allegations did not come from our oversight activity. That information—those allegations—came from FOIA requests and media initiatives.

The administration has not lived up to its promise to keep Congress informed on the issue of prisoner abuse. The administration has effectively stifled even modest congressional efforts at oversight.

As I said at the beginning, based on the information that is available, I will vote to confirm Judge Chertoff. I believe most or all Members will, but all Members should stand up to the administration's denial of a document which is relevant to his confirmation. We should act in unison to affirm and carry out the Senate's traditional oversight activities, regardless of which party controls this body or the White House.

I yield the floor, reserve the balance of my time, and I note 20 minutes of that time I would like to allocate to Senator DODD.

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

The Senator from Omaha.

Mr. COBURN. 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. WYDEN. 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. WYDEN. Mr. President, I ask unanimous consent to speak as in morning business and that the time be taken out of the time allocated to speak on the nomination.

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

#### MEDICARE PRESCRIPTION DRUG BENEFIT

Mr. WYDEN. Mr. President and colleagues, on Friday, the President said he would veto any changes that would, in his words, undermine the Medicare prescription drug benefit.

As one Democratic Senator who voted for the program and who wants to work very much in a bipartisan way to fix this program, I would ask this afternoon, with all due respect, that the President of the United States reconsider his position.

The President says that making changes to the Medicare drug benefit is going to take away benefits our seniors need. But I believe that smart changes now are the key to preserving seniors' benefits. Wise changes are not going to endanger the Medicare drug benefit, but, mark my words, refusing to mend it could end it. Spiraling costs and the low levels of participation we have seen thus far may jeopardize the very survival of the Medicare drug benefit.

Colleagues, the reason I believe that is the combination of these costs that continue to soar—they were originally appraised at about \$400 billion; now they are upwards of \$700 billion, and there are some estimates of \$1 trillion—the combination of the escalating costs and the paltry rate of seniors signing up, at least to date, means this program will require a great deal of money to be spent on a relatively small number of people. That is not a prescription for the program to survive.

I, for one, as someone who voted for this program and who feels passionately that it is important to get this right, hope the Senate comes together to try to put in place the changes that the program needs to get it back on track. I simply believe ignoring the obvious problems I have mentioned and the threat to veto any bipartisan solution is not a productive or responsible reaction.

Making changes to contain costs and increase participation—making those changes on a bipartisan basis—is precisely what the Congress and the administration ought to be spending their time doing. I, for one, think the legislation that Senator SNOWE and I have worked on for more than 3 years

is a very good place to start. But, obviously, colleagues of both parties have other ideas.

I see my friend, the distinguished Senator from Oklahoma, in the Chamber. He and I served in the House on the Health Committee. He has excellent ideas with respect to ways to hold down some of the costs in the Medicare program overall, particularly in the preventive area. I think he is dead on target. Senator SNOWE and I have what we think is a bipartisan first step with respect to getting the prescription drug program back on track. But certainly colleagues in this body have other ideas.

The reason Senator SNOWE and I advocate the approach we are taking is that it essentially builds on what is going on in the private sector. For the life of me, I cannot figure out why Medicare will not be a smart shopper the way everybody else is in the private sector. I have said that Medicare, as a purchaser, is pretty much like the fellow in Price Club buying toilet paper one roll at a time. Nobody would shop that way. It defies common sense because all across the country, if you are interested in purchasing something, and you are already going to purchase a certain amount, and you agree to buy more of it, then people give you a discount. It is just economics 101. Yet Medicare has not gotten that message.

So under the legislation that Senator SNOWE and I have been pursuing, we take a sharp-pencil, fact-based, cost-containment approach that essentially builds on what is going on in the private sector across the country.

In addition to the effort to use those private sector cost-containment techniques, we would provide that drug prices be monitored to make sure artificial price increases do not negate the benefit to older people. We would make sure that seniors have the information about real savings so they can choose the plan that best makes sense for them.

It seems to me, by refusing the opportunity to make any improvements to this program, the White House is writing a prescription for a program that cannot survive. I do not want to see that happen. A number of us in this body took some real risks to be part of this bipartisan plan. What I want to do is roll up my sleeves and work with the President, work with colleagues of both political parties, on a bipartisan, cost-containment strategy that will save this program. That is what this effort ought to be all about: saving this program.

I am not the only one who believes that Medicare's needs ought to take precedence at this time. Here is what David Walker, the Comptroller General of the Government Accountability Office, said recently:

The Medicare problem is about seven times greater than the Social Security problem and it has gotten much worse. It is much bigger, it is much more immediate and it is going to be much more difficult to effectively address.

The President has said he is going to tackle Medicare when he is done with Social Security. But the facts are the facts, and the timetable for trouble in Medicare is a lot tighter. At the very least now, changes should be made to shore up the newest element of Medicare: the hard-won prescription drug benefit, that every time we turn around the costs go up and up.

So it is time to introduce the cost-containment, attention-to-detail, and sharp-pencil accounting that has been lacking in this program so far. I want to make it clear, failure to put in place those kinds of approaches jeopardizes, in my view, the very survival of this program. I do not want to see that happen.

Like a lot of colleagues—and the Senator from Oklahoma has devoted his professional life to health care—I feel very strongly about this subject. I got involved in health care back in the days when I was codirector of the Oregon Gray Panthers and I could only dream about this kind of opportunity for public service and to get this issue right.

The reason I voted for the legislation initially is I thought it was a first step. I thought it was a constructive step because it would help people with very big bills and very low incomes. There were a lot of other deficiencies in it, but I thought: At least we are getting started because we are helping two groups where the need is very great. But I think the events of the last few months, as I say, raise real questions about whether this program can survive. I do not think, frankly, the prescription drug benefit program can stand a whole lot more bad news.

So what I would hope we would do, in addition to having the debate about exactly how much this has gone up—it is very obvious it has gone up and up repeatedly, and is sure to go up even more—is spend our time with our sleeves rolled up, working in a bipartisan way, working with the President of the United States, to make sure this program delivers on its promise.

A good prescription drug benefit is something this country can't afford not to have. Senator COBURN knows about this. He has probably heard exactly the same experience I hear from physicians in Oregon who tell me that they have actually put seniors in hospitals because there is not an outpatient prescription drug benefit. That is pretty bizarre, even by the standards of Washington, DC, to have people go into a hospital, roll up these enormous costs under what is called Part A of Medicare, because we don't have a sensible, well-designed prescription drug benefit on an outpatient basis under Part B of the program.

When people say we cannot afford to do this, I think we can't afford not to do it. But it has to be properly designed. It has to be structured so as to make the best possible use of taxpayer resources during a belt-tightening time in our Government.

I hope the President will reconsider his position. I hope the President will recall his threat to veto changes to the Medicare drug benefit. I assure colleagues, particularly colleagues on the other side of the aisle, that I want to work with them in a bipartisan way. Having voted for this legislation and having the welts on my back to show for it, I want this legislation to succeed. So Congress has some heavy lifting ahead to make sure there are responsible, practical adjustments to this program that are going to save it for the future and to get the job done right for the country's older people.

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.

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

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

Ms. COLLINS. Mr. President, I start my remarks by putting this debate in context. Senator LEVIN, with whom I proudly serve not only on the Homeland Security and Governmental Affairs Committee but also on the Senate Armed Services Committee, catalogued some of the interrogation techniques used by certain DOD personnel that for many months have disturbed all of us. They have led us to hold hearings in the Armed Services Committee and they have led the Intelligence Committee to embark upon an investigation of the interrogation techniques used by certain CIA employees. But today's debate is about Michael Chertoff. It is about whether Michael Chertoff, who has repeatedly assured us by direct testimony under oath and in written responses to questions that he has had nothing to do with the interrogation policy, should be confirmed to be Secretary of Homeland Security.

I want to make that very clear. The debate today is not about the interrogation policies, the techniques that led to abuses that disturb and concern us all. The debate today is about the fitness, the qualifications, and the character of Judge Michael Chertoff for this very important position.

I turn to some of the testimony that Judge Chertoff gave in response to questions from Senator LEVIN and other members of the committee. I note that his testimony before the committee was sworn testimony. He was under oath, as are all of the nominees who come before our committee. As this chart shows, Judge Chertoff testified as follows:

I was not aware during my tenure at the Department of Justice . . . if there were practices in Guantanamo that would be torture or anything even approaching torture.

In response to another question, he said:

I don't recall having any discussion about techniques that the Defense Department was

using in Guantanamo other than simply the question of whether interrogations or questioning down there was effective or not. I was never informed or had no knowledge at the time . . . about any use of techniques in Guantanamo that were anything other than what I would describe as kind of plain vanilla.

Again, in response to a posthearing question submitted for the record by Senator LEVIN:

[T]he tenor of the discussion was what information was being furnished by detainees and whether detainees should be encouraged to talk by providing offers of favorable treatment in return for information. I recall no discussion of mistreatment of detainees.

Mr. President, I quote from those responses because they are unambiguous. In addition, in the prehearing questions, Judge Chertoff stated unequivocally his opposition to torture, no matter where it might occur.

Senator LEVIN has expressed his concern that the Department of Justice has refused to release information redacted from an e-mail discussing the interrogation techniques at Guantanamo Bay. I do not believe the information Senator LEVIN seeks is relevant to the important issue at hand, the nomination of Judge Michael Chertoff to be the Secretary of Homeland Security.

Nonetheless, let's review what we know about this e-mail. The first question that my colleagues might well ask about this e-mail is: Did Michael Chertoff write the e-mail? The answer to that question is no.

Then my colleagues might say: Was the e-mail addressed to him? Again, I inform my colleagues that it was not. The answer is no.

My colleagues might ask: Was he a recipient of this e-mail? Was he cc'd on it, or bcc'd on the e-mail? Again, the answer is no.

Well then, you might ask: Was Michael Chertoff named in the e-mail? Again, the answer is no.

In fact, you may ask: Had Michael Chertoff even seen the e-mail prior to the day of his nomination hearing? Again, the answer is no.

Is it surprising that Judge Chertoff testified that he had never seen the e-mail prior to the day of the hearing? Again, the answer is no, it is not surprising at all because the e-mail was drafted a year after Judge Chertoff had left the Department.

The real question, then, is what an unredacted copy of this e-mail could possibly add to our evaluation of Judge Chertoff's qualifications for the job of Secretary of Homeland Security? Senator LEVIN has said that since this e-mail refers to some discussions that may have taken place while Judge Chertoff was at the Department of Justice—even though the e-mail was written more than a year after he left the Department of Justice—Senator LEVIN says that if we got the names of the Criminal Division staff who met with the FBI regarding the interrogation techniques, we could attempt to question the officials mentioned in the e-

mails in order to, and I am quoting Senator LEVIN, "refresh Judge Chertoff's recollection of these matters."

First, I must say that the contention that we would need to know the names and then go back and question Judge Chertoff in order to refresh his recollection is, in my judgment, demeaning to Judge Chertoff. He was straightforward in his testimony. He answered all the questions that were posed to him, both before the hearing, at the extensive hearing, and after the hearing. He was unequivocal in his testimony on this issue. As I have shown you with the previous posters, he said:

I was not aware during my tenure at the Department of Justice if there were practices at Guantanamo that would be torture or anything even approaching torture.

Second, the suggestion that we should question DOJ officials about Judge Chertoff's sworn testimony is one that I reject outright because what we are saying is that it assumes Judge Chertoff was not being candid with the committee. There is no evidence of that. There is no indication at all that he was not completely truthful and forthright with the committee.

Judge Chertoff has already testified under oath. I see no reason why we should not take his testimony, his sworn testimony, at face value. This is particularly true when there is nothing in the e-mail that suggests his testimony was not accurate. We have no reason to believe it was not accurate. I would have to ask, have we become so cynical about the good people who are making extraordinary sacrifices to serve their country? If this is what the confirmation process is becoming all about, then I fear that very good people are going to say, No. They are going to say, It is not worth having my honesty questioned when all I am trying to do is to serve my country.

I remind my colleagues that Judge Chertoff is giving up a lifetime appointment on one of the most prestigious courts in our country in order to answer the call to serve in one of the most difficult, the most thankless jobs in the Federal Government. It troubles me deeply that we have delayed his nomination, that there are some who are saying, No. I want to check on this testimony more, when there is no evidence to suggest that is warranted.

We need a strong leader in place at the Department of Homeland Security. It has been 13 days since Secretary Ridge has vacated that position. We know the Department has problems—that there are management problems, there are policy challenges. We need to get the Secretary in place as soon as possible. He needs to be able to get his team in place to tackle the serious security issues and management challenges facing the Department.

I think our country is very fortunate to have someone with the background, the experience, the intellect, the qualifications, and the integrity of Judge Chertoff who is willing to serve. I think

we should have confirmed him last week, and I think we need to get him in place without further delay.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, let me comment on the statement of my dear friend, Senator COLLINS, that somehow or other seeking information is questioning anybody's integrity. We are seeking information because it is relevant to a confirmation process.

Senator LIEBERMAN and I wrote a letter seeking information which relates to the confirmation process in a very important way. We are not going to get that information because the Department of Justice has decided they will not unredact the names of Government employees who were present at discussions relative to the procedures used, the techniques used at Guantanamo during the period that Judge Chertoff was head of the Criminal Division and where those Government employees were members of his Criminal Division. That is not a challenge to anybody's integrity. That is not demeaning. That is simply carrying out a responsibility that this Senate has to be fully informed as to the facts that relate to a nominee. It is that simple. It is that important.

For the Department of Justice to say the names of Government employees somehow or other should remain secret when those employees, paid by the taxpayer, were present during conversations at which the FBI strongly objected to the techniques and tactics which were being used by the Department of Defense to obtain information is simply something that we as a Senate cannot accept.

We cannot be denied relevant information. We cannot and should not be denied relevant information.

There is only one question here, it seems to me; that is, the request of Senator LIEBERMAN and myself for relevant information. If it is relevant information, every one of us should support the request. If it is not relevant information, it is a totally different issue. But is it relevant?

If members of Judge Chertoff's staff, whose names have been covered up by the Department of Justice—if we are denied those names, is it relevant that members of the Department of Justice Criminal Division who were present during conversations apparently after conversations—we at least know of one—where there were heated disputes between the FBI and the Department of Defense over the tactics which were used at Guantanamo Bay—Judge Chertoff doesn't remember those discussions. He said that twice in his answers. I don't disagree with him at all. If he doesn't remember, I take him at his word—he doesn't remember.

That is not the question. The question is, Are there members of his division who were present so that we can ask them whether they informed their supervisors, and whether, just possibly, Judge Chertoff, then head of the Crimi-

nal Division, was informed. If he doesn't remember being informed, I don't doubt that. I am not doubting that at all.

But I guess the most direct question I can ask is this: If those names were not redacted, if instead we had those four names there, is there any doubt in any Senator's mind that we could ask those people whose names we know whether they informed their supervisors of this heated debate between the FBI and the Department of Defense personnel?

The FBI in memo after memo after memo was strongly objecting to the practices of military members of the Department of Defense, some of whom were pretending they were FBI members. This was not one casual conversation. There was a major confrontation going on between the FBI, strongly, heatedly, telling the Department of Defense: We can't participate in what you are doing. We object to what you are doing. Those techniques are wrong. We cannot participate. We are going to withdraw from these techniques.

Then, if at least in one of these conversations—you have four SESs, executives in Judge Chertoff's division, which he headed, who were present at the discussions—he says: I don't remember. Fine. I take him at his word.

But—at least if we do not have the responsibility—we surely have the right, if we know those names, to ask those folks: Look. You were present at these conversations. You were representing the Criminal Division of the Department of Justice. The FBI was strongly objecting to what was going on.

These were abusive techniques that were being used which have created so much problem for this country and for our military. You were present. Our question to you is this, Did you inform any of your supervisors of what you heard? And, by the way, perhaps for a different hearing, if not, why not? But if they say no, that means obviously there is nothing with which to refresh Judge Chertoff's memory.

The good Senator from Maine asked a number of questions to which the answers were clearly no. Did he write these documents? He did not. Did he receive a copy of this document? He did not. But the question that yes is the answer to is, if the names of those employees of the Criminal Division were written out in this document and not redacted, would it be appropriate for a Member of the Senate or our staff to ask those employees, Did you inform your supervisors of these debates going on, which were raging debates between the FBI, the Department of Justice on one side and the Department of Defense on another? The answer to that question, I think, is yes.

I think, without any doubt, if those names were there and not covered over by the Department of Justice, that it would be perfectly appropriate for any of us to ask John Doe: Did you report those discussions in which you were

participating? Were you both, apparently, putting forward objections to the techniques being used and heard the FBI objecting to those techniques? Did you let your supervisors know?

If that is a legitimate question to ask those unnamed employees, if we had their names, if that is a legitimate question to ask them, is it not legitimate to find the names of those employees so we can ask a legitimate question? I think the answer is yes.

I don't disagree at all with the Senator from Maine when she says that Judge Chertoff didn't write it—apparently didn't receive it and did not name those questions at all—and answered yes. But there are a couple of questions which also have to be answered yes. If we knew the names of those employees who were present at those discussions, could we ask them whether they notified their supervisors? I think the answer is yes. That is an appropriate question.

Second, if so, is it an appropriate question to ask, Did you ever talk to Judge Chertoff about it?

That doesn't challenge his integrity. He says on a number of occasions that he doesn't recall having any discussion about techniques. I take him at his word.

But if they recall talking to their supervisors, then, it seems to me, we are in an area which is perfectly appropriate to a confirmation process.

There is no intent to challenge his integrity. In fact, I am going to vote for Judge Chertoff based on what I know. As I explained before, I am going to vote for Judge Chertoff based on the information before us.

But I think as a body we should reject unanimously—all of us—the excuse given by the Department of Justice. If the Privacy Act is not allowed in naming Federal employees who were parties to discussions, we have to reject that argument, or else we can forget congressional oversight.

We get tens of thousands of documents a year that have names of Federal employees we need and to whom we need to talk. They cannot be protected by the Privacy Act. The Privacy Act is intended to protect the privacy of citizens of this country. It is not to protect from congressional oversight Federal employees engaged in their duties. That is a misuse of a statute by the Department of Justice that has found all kinds of reasons over the years to deny this branch of Government access to documents.

The issue here is a broader issue. This is an example of a problem that we have in terms of getting documents. I laid this out in an earlier speech this afternoon in terms of the difficulty of getting documentation from this administration and other administrations—at the moment, this administration—that is relevant to our oversight function and that is relevant to our confirmation process.

I think we have done a very inadequate job of oversight relevant to

prisoner abuse. The reasons given by myself were set forth earlier this afternoon. They are unacceptable.

We have a responsibility to our troops. Our troops are in danger because of what we did to other people. It endangers the men and women in our military. We cannot mock or demean the Geneva Convention. We cannot engage in practices which are not allowed by the Geneva Convention. When we do, we endanger not just our troops, as important as that is, but we also endanger the security of this Nation.

That is the backdrop here. This is not an oversight hearing we are talking about. This is a confirmation proceeding of one man whose reputation is superb, whose integrity is unquestioned by me. And I do not know of anyone who questions his integrity. The question is, As part of the confirmation proceeding, do we have a right—maybe not a responsibility, although I could argue that question, but clearly the right—to ask people who were in his division who were present at these discussions whether they passed along this intense conflict between the Department of Justice and the FBI on the one hand and the Department of Defense on the other hand?

The document in question is, indeed, as the Senator from Maine said, a 2004 document. But the reference is to events that occurred in 2002 and 2003. The way we know that is because the document itself makes reference to the two generals who were present in Guantanamo Bay in 2002 and 2003 and were responsible for running the detention facility. We also know it comes after the events in question because the purpose of this document is to go back into the record and to look for previous documentation that related to this subject.

Here is what triggered this document. It was an email that asked the following question: Has there been any written guidance given to FBI agents in either GTMO or Iraq about when they should stand clear because of the interrogation techniques being used by DOD or DHS?

That is what set in motion the review of prior emails that exist, prior activities that existed. So this document was clearly written when that became a major issue in 2004. But it was precipitated by the request to go back and see whether there has been any written guidance to FBI agents.

Again I expect that most or all Members will vote for Judge Chertoff. I will, based on what I know.

The disagreement I have is with the Department of Justice as to what we are not allowed to see, although it is relevant to this confirmation process.

Senator LIEBERMAN and I wrote a letter. I ask unanimous consent this be printed in the RECORD, as well as the response to Senator LIEBERMAN and my letter, along with a three-page email, May 10, 2004.

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

U.S. SENATE, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,

Washington, DC, February 4, 2005.

Hon. ROBERT S. MUELLER III,  
Federal Bureau of Investigation, J. Edgar Hoover Building, Washington, DC.

DEAR DIRECTOR MUELLER: The Homeland Security and Governmental Affairs Committee is currently considering the nomination of Judge Michael Chertoff to be Secretary of the Department of Homeland Security (DHS). The enclosed document came to our attention during preparation for the nomination hearing, and the purpose of this letter is to request an unredacted copy for review.

The document consists of three FBI internal emails dated May 10, 2004, marked by Bates Nos. 2709 to 2711. The redacted version was recently released by the FBI in response to a request by a private party under the Freedom of Information Act. The document indicates that FBI personnel were deeply concerned about interrogation techniques which were being used in Guantanamo Bay by the Department of Defense and DHS personnel. It further indicates that FBI personnel communicated with personnel in the Department of Justice, including the Criminal Division, regarding their concerns about interrogation techniques in use at Guantanamo Bay. Based on the content of the document, we believe many of the referenced events occurred during the tenure of Judge Chertoff as head of the Criminal Division, and an unredacted copy of this document will allow a fuller understanding of the events being discussed.

We ask that an unredacted version of this three-page document be provided to the Office of Senate Security where we and staff members with appropriate clearance can review it. Please provide an unredacted copy to the Senate Security Office no later than 4:00 p.m. on Friday, February 4, 2005. If you will not provide a copy of this document, please provide a legal justification for doing so.

Thank you for your attention. If your staff has any questions, please have them contact Elise J. Bean (Sen. Levin) or Laurie Rubenstein (Sen. Lieberman).

Sincerely,

JOSEPH LIEBERMAN,  
CARL LEVIN.

DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, DC, February 7, 2005.

Hon. CARL LEVIN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR LEVIN: This responds to your letter to FBI Director Mueller, dated February 4, 2005, which requested the unredacted version of a classified three-page FBI document, dated May 10, 2004, regarding the interrogation of detainees at Guantanamo Bay.

We have carefully considered your request, but concluded that the unredacted document cannot be released in response to your request because it contains information covered by the Privacy Act, 5 U.S.C. 552a, as well as deliberative process material. We note, however, that the document is comprised of FBI messages that were not sent by or addressed to Judge Chertoff and it contains no reference to him by name or otherwise.

We hope that this information is helpful. We are sending an identical letter to Senator Lieberman, who joined in your letter to us. Please do not hesitate to contact me if you would like additional assistance regarding any other matter.

Sincerely,

WILLIAM B. MOSCHELLA,  
Assistant Attorney General.

MESSAGE

From: — (Div 13) (FBI)  
Sent: Monday, May 10, 2004 12:26 PM  
To: HARRINGTON, T J. (Div 13) (FBI)  
Cc: BATTLE, FRANKIE (Div 13) (FBI); — (IR) (FBI); — (Div 13) (FBI); — (Div 13) (FBI); — (Div 13) (FBI); CUMMINGS, ARTHUR M. (Div 13) (FBI)  
Subject: Instructions to GTMO interrogators.

ORCON, NOFORN RECORD 315N-MM-C99102

TJ, I will have to do some digging into old files —. We did advise each supervisor that went to GTMO to stay in line with Bureau policy and not deviate from that —. I went to GTMO with — early on and we discussed the effectiveness — with the SSA. We (BAU and TOS1) had also met with Generals Dunlevey & Miller explaining our position (Law Enforcement techniques) vs. DoD. Both agreed the Bureau has their way of doing business and DoD has their marching orders from the Sec Def. Although the two techniques differed drastically, both Generals believed they had a job to accomplish. It was our mission to gather critical intelligence and evidence — in furtherance of FBI cases. In my weekly meetings with DOJ we often discussed — techniques and how they were not effective or producing Intel that was reliable. — (SES). — (SES) — (now SES) — at the time) and — (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed — were going to be an issue in the military commission cases. I know — brought this to the attention of —.

One specific example was —. Once the Bureau provide DoD with the findings — they wanted to pursue expeditiously their methods to get "more out of him" —. We were given a so called deadline to use our traditional methods. Once our timeline — was up — took the reigns. We stepped out of the picture and — ran the operation —. FBI did not participate at the direction of myself, — and BAU UC —. We would receive IIRs on the results of the process.

I went to GTMO on one occasion to specifically address the information coming from —. We (DoD 3 Star Geoff Miller, FBI, CITF — etc) had a VTC with the Pentagon Detainee Policy Committee. During this VTC I voiced concerns that the Intel produced was nothing more than what FBI got using simple investigative techniques (following the trail of the detainee in and out of the US compared to the trail of — was providing — portion of the briefing. — was present at the Pentagon side of the VTC. After allowing — to produce nothing, I finally voiced my opinion concerning the information. The conversations were somewhat heated. — agreed with me. — finally admitted the information was the same info the Bureau obtained. It still did not prevent them from continuing the — methods". DOJ was with me at GTMO — during that time.

Bottom line is FBI personnel have not been involved in any methods of interrogation that deviate from our policy. The specific guidance we have given has always been no Miranda, otherwise, follow FBI/DOJ policy just as you would in your field office. Use common sense. Utilize our methods that are proven (Reed school, etc).

If you would like to call me to discuss this on the telephone I can be reached at —.

## MESSAGE

From: Harrington, T J. (Div13) (FBI)  
 Sent: Monday, May 10, 2004 9:21 AM  
 To: \_\_\_\_\_ (Div13) (FBI)  
 Subject: RE: pls confirm  
 SENSITIVE BUT UNCLASSIFIED NON-RECORD

We have this information, now we are trying to go beyond did we ever put into writing in an EC, memo, note or briefing paper to our personnel our position \_\_\_\_\_ that we were pursuing our traditional methods of building trust and a relationship with subjects. TOM

From: \_\_\_\_\_ (Div13) (FBI)  
 Sent: Monday, May 10, 2004 10:52 AM  
 To: Harrington, T J. (Div13) (FBI)  
 Cc: \_\_\_\_\_ (Div13) (FBI); BATTLE, FRANKIE (Div 13) (FBI); BOWMAN, MARION E. (Div09) (FBI)  
 Subject: RE: pls confirm  
 SENSITIVE BUT UNCLASSIFIED NON-RECORD

BAU at the request of the then (GTMO Task Force, ITOS1) wrote an EC (quite long) explaining the Bureau way of interrogation vs. DoDs methodology. Our formal guidance has always been that all personnel conduct themselves in interviews in the manner that they would in the field. \_\_\_\_\_ along with FBI advised that the LEA (Law Enforcement Agencies) at GTMO were not in the practice of the using \_\_\_\_\_ and were of the opinion results obtained from these interrogations were \_\_\_\_\_ BAU explained \_\_\_\_\_ FBI has been successful for many years obtaining confessions via non-confrontational interviewing techniques.

We spoke to FBI OGC with our concerns. I also brought these matters to the attention of DOJ during detainee meetings with \_\_\_\_\_ express their concerns to \_\_\_\_\_.

\_\_\_\_\_ has a copy of all the information regarding the BAU LHM. I believe she has provided that to TJ Harrington.

I may have more specific information in my desk at HQ. I will search what I have when I return (5/17).

From: Harrington, T J. (Div13) (FBI)  
 Sent: Monday, May 10, 2004 4:33 AM  
 To: BATTLE, FRANKIE (Div13) (FBI); \_\_\_\_\_ (Div13) (FBI) \_\_\_\_\_ (Div13) (FBI)  
 Subject: FW: pls confirm  
 SENSITIVE BUT UNCLASSIFIED NON-RECORD

Please review our control files, did we produce anything on paper???

From: Caproni, Valerie E. (Div09) (FBI)  
 Sent: Sunday, May 09, 2004 2:31 PM  
 To: \_\_\_\_\_ (Div09) (FBI); HARRINGTON, T J. (Div 13) (FBI) \_\_\_\_\_ (Div13) (FBI) \_\_\_\_\_ (Div13) (FBI)  
 Subject: pls confirm  
 SENSITIVE BUT UNCLASSIFIED NON-RECORD

I think I've heard this several times, but let me ask one more time:

Has there been any written guidance given to FBI agents in either GTMO or Iraq about when they should "stand clear" b/c of the interrogation techniques being used by DOD or DHS.

*DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations*

*DECLASSIFICATION EXEMPTION 1  
 SECRET//ORCON, NOFORN*

Mr. LEVIN. I note in closing the part of this denial of the Department of Justice that is unsustainable and should be rejected unanimously by Congress is the statement that the material can-

not be released because it contains information covered by the Privacy Act as well as deliberative process material. The Privacy Act reliance is totally out of the ballpark. It is so far afield from any argument the executive branch has used that we must reject that. If we do not, if we accept the use of the Privacy Act to deny this Congress documents that relate to activities of Government employees carried out in the performance of their duties, we will have struck a major blow to the oversight responsibilities of this Congress.

As to the second reason given, deliberative process material, there are no conversations whatever that I can see that are with the President of the United States. That reference to deliberative process material also should be unacceptable to all Members of Congress regardless of what side of the aisle we happen to be sitting on.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Maine.

Ms. COLLINS. My good friend from Michigan is one of the best debaters in the Chamber. He is a thoughtful Member. I suspect he may at one time in his career have been an extraordinary trial lawyer.

However, we are not putting Judge Chertoff on trial. This is a confirmation hearing. This debate is not about the names of certain employees within the Justice Department. It is about whether we feel the need to challenge the sworn testimony of a distinguished public servant. Judge Chertoff has already told us, under oath, that he was not aware of any practices at Guantanamo that "even approach torture."

So what does my good friend from Michigan want to ask these Justice Department officials? The answer is, whether they talked to Michael Chertoff about interrogation techniques, the precise question that Judge Chertoff has already answered in the negative. There is no basis to doubt Judge Chertoff's sworn testimony before the committee. He has answered all of the questions over and over again. The only reason to get the names of these Justice Department employees is to challenge the veracity of his answers. There is no basis for that. There is nothing in his background, in his testimony, in his answers to us that should lead us to question him further about this unless there is new evidence that appears that suggests he was less than truthful with the committee. There is no such evidence. This issue is not related to his fitness to serve in this very important position.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. I thank my good friend for what I think were flattering references, but in any event I thank her because she is an absolutely superb Member of this body and a great chairman of our committee. It has been my pleasure to serve with her for a long time.

On this one, there are two questions which I want to repeat. I think the answer to the questions has to be yes. The way I phrase the first question is this: If those members of the Criminal Division's names were on that document, would it be appropriate to ask them if they had any conversations with their supervisors? Is that an appropriate question? The answer is, clearly, yes.

This does not challenge anybody's integrity. As a matter of fact, Judge Chertoff said in a number of places, "I don't recall having any discussion." At another point he said he did have a discussion. The question is whether his recollection is different from someone else's. That does not challenge his honesty or integrity. That simply says that people's recollections are different, and when that is true, sometimes people's recollections are refreshed.

It is a straightforward, legitimate question to ask people who worked in his division, whether they notified their supervisor of these heated conversations, these discussions that they participated in and overheard between the Department of Justice and the Department of Defense. If the answer to that question is yes, which I think it must be, that it would be legitimate to ask those people if, when they heard that debate, that heated discussion over tactics at Guantanamo, did they inform their supervisors that the FBI strongly objects to the DOD techniques and is not going to participate in any of those techniques, would it be appropriate to ask them whether they notified their supervisors if we knew their names?

The answer is yes, I think. If I am right, it is appropriate to ask those four people that question, then it is appropriate to have the names of those four people. That is as simple as I think I can make the argument.

This is not, again, a challenge to anyone's honesty or integrity. It is an effort to be thorough in a confirmation process about the events which have torn this country away from some of our strongest allies, the activities at Guantanamo which drifted over to Iraq and to Abu Ghraib. According to the generals who investigated this matter, these horrors, these abuses started in Guantanamo Bay.

Members of the Criminal Division, while Judge Chertoff was head of that Criminal Division, heard of the debate relative to these activities and these actions. They strongly objected to those actions on the part of the DOD. I spent 20 or 30 minutes or more earlier today going into the whole background of Guantanamo. This is not some minor event that occurred somewhere in dusty history or in a history book. These are recent events at Guantanamo which engendered heated discussions, debates between the FBI, on the one hand, which said we cannot participate in those techniques, and the Department of Defense, on the other hand.

Now, when the administration, the Department of Justice, denies the Congress an opportunity to ask legitimate questions, which we have the right to ask—and if my dear friend from Maine does not think we have the responsibility to ask them, that is a judgment which I do not challenge; if she does not feel the need to ask these questions of those employees, I do not challenge her decision on that whatsoever—but given the entire setting of Guantanamo, and what it led to, and the heated discussions that occurred there, with the FBI challenging the DOD, and with Judge Chertoff's division employee members being present during those discussions, some of us feel a responsibility to ask those employees whether they passed along the information they were privy to.

So this is a bigger issue. It is a much bigger issue. As I say, I am going to be voting for Judge Chertoff based on the information I have. But we should not be denied this other information.

Again, I thank my friend from Maine. I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, the Senator from New Mexico wishes to speak for up to 15 minutes as in morning business on an issue unrelated to this nomination. I ask unanimous consent that he be so recognized but that the time he consumes be taken from the minority side on this debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I thank the Senator from Maine for her courtesy, and my colleague from Michigan.

#### SCIENCE AND TECHNOLOGY IN THE PRESIDENT'S BUDGET

Mr. President, I rise as in morning business to speak about the budget that has been submitted by the President, and particularly to speak about the science and technology portions of the budget, the portions of the budget that are intended to support science and technology in this country.

In his recent State of the Union Message, President Bush said:

By making our economy more flexible, more innovative, and more competitive, we will keep America the economic leader of the world.

I agree with the President that strong economic growth is vital to continued American leadership. I also believe innovation is the key to that growth. But the reality of his proposed budget to spur innovation for the next year does not square with the rhetoric we heard last week.

I fear this budget will do serious harm to our Nation's scientific and technological capacity. And because it shortchanges our children and threatens to deprive them of the prosperous America we have enjoyed, the shame will be on us if we allow it to be enacted as it has been presented to us.

We are about to embark on an intense debate about the priorities of the Nation. This debate is all about the Nation's future growth and prosperity, and that, in turn, is about our Nation's investment in the foundations of discovery and innovation.

What will not be in dispute in this several month long debate is that science, and the technology that flows from it, is recognized as the principal engine of our economic growth. Nor will there be any contention about the fact that America's present strength, prosperity, and global preeminence depend upon the fundamental research we do in this country. The scientific and economic record of the past 50 years is overwhelming proof on both of those points.

Regrettably, knowing full well that economic growth is the prerequisite for opportunity, and that scientific research is a basic prerequisite for growth, this budget blueprint for the next fiscal year falls far short of meeting our long-term national goals. It is unsuited to the challenges of our time, it is built on short-term political calculations and it weakens one of the pillars of our country's future economic health. It is not a clearly thought out strategy to ensure the preeminence of the U.S. scientific enterprise.

The budget proposes much larger cuts in domestic discretionary research and development programs than is generally understood. The less than straightforward numbers of the Office of Management and Budget have the effect of obscuring the true impact of the cuts that are proposed. Moreover, once one gets past 2006, the proposed budgets in the outyears for domestic discretionary programs throughout the Government would be cut below the 2004 and 2005 levels, even before inflation is taken into account.

Many of these research and development programs that are being curtailed or cut back have provided the cornerstone for our recent economic progress and have spurred the creation of high-paying jobs and record prosperity.

Basic research is the primary source of the new knowledge that ultimately drives the innovation process. The Federal Government supports a majority of the Nation's basic research, and the Federal Government supports nearly 60 percent of the research and development performed at U.S. universities. Equally important, federally funded research and development at universities and colleges plays a key role in educating the next generation of scientists and engineers and providing a technically skilled workforce.

So scientific investments have never been more important to our Nation's future. And never have we stood on the verge of so many stunning advances in technology and science. Cutting back now would be like cutting back our defense budget at the height of the Cold War.

Increases are disproportionately concentrated primarily in two Depart-

ments—Defense and Homeland Security—while other research and development funding agencies are left with very modest increases or with increases for some agencies that are offset by flat funding or cuts in other agencies. In the name of national security, we are building a swaying tower of insecurity with regard to our long-term future.

In order to make room for huge tax cuts and to address the record budget deficits they have helped to create, the administration now proposes major cuts in the research our country depends on to maintain its technical leadership and ensure that Americans continue to enjoy growing prosperity and high-paying jobs.

The budget distinguishes between Federal R&D spending and Federal spending for "Federal science and technology." The Federal science and technology designation, recommended by the National Academy of Scientists, is intended to highlight "activities central to the creation of new knowledge and technologies more consistently and accurately than the traditional R&D data."

It includes the full budgets for the National Institutes of Health and the National Science Foundation, the Defense 6.1 and 6.2 research programs, the various Energy Department R&D programs, and a variety of research efforts at other agencies. Overall, this Federal science and technology designation encompasses nearly all of Federal basic research, more than 80 percent of Federal applied research, and about half of civilian development.

It does not include defense development, testing, and evaluation.

The overall Federal science and technology budget suffers a 3-percent decrease in real buying power under the proposal we have received. Businesses have always looked to the Federal Government to support the lion's share of basic research that has led to business successes in modern aircraft and computing and in many other areas.

For Federal science and technology, the President's budget proposes a reduction of \$877 million, to \$60.2 billion. Among other things, it provides a death sentence for the Advanced Technology Program, and it slashes funding for kindergarten through twelfth grade science and math education.

President Bush's proposed 2006 budget flat-lines or cuts funding for key Federal medical and health research agencies. Today's miracles of modern medicine are the result of past research in physics, chemistry, mathematics, computer sciences, and engineering, most of which was carried out in universities by faculty and student researchers and supported by the National Science Foundation, the National Institutes of Health, the Department of Energy, and several defense agencies.

The National Science Foundation, in this proposed budget, is woefully underfunded. Two years ago the President

signed a bill authorizing the doubling of the budget of the National Science Foundation, the premier agency supporting basic research in all fields of science and engineering in the Nation's outstanding universities, and tasked with promoting investments in science, math, and engineering education. The administration's request next year for the NSF is \$2.91 billion or 34 percent below the fiscal year 2006 level that was authorized in the bill signed by the President. Adjusted for inflation, the real purchasing power of NSF actually declines in next year's budget. The National Science Foundation education programs continue to be devastated. They are down another 24 percent from last year's level.

If the administration believes in closing the gap in science and math performance between our students and the rest of the world, how is that possible when proposing major cuts in science and math education programs?

The National Institutes of Health, the Nation's principal source of funding for the treatment of cancer, AIDS, diabetes, and Alzheimer's, would decline 1.4 percent in constant dollars. The number of research project grants funded by the NIH in fiscal year 2006 would drop. This proposal, if enacted, will be the worst NIH budget since 1970.

The Centers for Disease Control and Prevention, critical in preparing us for potential epidemics from possibly devastating new infectious diseases and biological terror, is proposed to be cut by 9 percent in constant dollars, while the Agency for Healthcare Research and Quality would be flat funded at \$319 million.

At the Department of Energy, the Federal science and technology budget would drop by \$278 million or 5 percent. The science programs in the Department of Energy that support much of the Nation's premier work in physics and material sciences are cut 6 percent in real spending. While the President's rhetoric during the State of the Union supported renewable energy sources and energy efficiency, the budget does not. Renewable energy research is cut 9 percent in constant dollars. Energy efficiency is cut 5 percent. All other energy programs—nuclear, fossil fuel, transmission, and distribution—are proposed for a decline of 9 percent.

The administration is also undercutting efforts to support a technology-driven economy by slashing the budgets for the National Institute of Standards and Technology. The fiscal year 2006 request is 24 percent less than the fiscal year 2005 appropriated level of \$708 million. The request eliminates the Advanced Technology Program, including \$43 million of funding for ongoing projects that companies are relying on and planning to complete. The Advanced Technology Program is an industry-led, competitive, cost-share program that allows U.S. companies to develop the next generation of breakthrough technologies. It enables them to compete aggressively against foreign rivals.

According to its 2004 annual report, returns from just 41 of the 736 ATP projects have exceeded \$17 billion in economic benefits, more than eight times the amount of money spent for all of the 736 projects. The National Academy of Sciences has found ATP to be an effective program that could use more funding and use it wisely.

Buried within the Department of Defense budget are cuts to investments in science and technology that will substantially undermine our warfighting capabilities 10 to 15 years from now. Defense research, both basic and applied, are starved and, when inflation is factored in, we will end up buying less research than we did before. The Federal science and technology budget at the Department of Defense would drop by \$905 million or 14 percent. For decades possession of superior technology has been the cornerstone of U.S. military strategy. Maintaining this technological edge has become even more important as our military faces new and formidable dangers to countering chemical, biological, nuclear, and high explosive threats and attacks. This budget makes a grave mistake in saying that America's greatest military assets are no longer our greatest research universities.

Overall, the Federal budget for science and technology would decline by over 3 percent and would decline by 4 percent in the absence of the requested increase for manned spaceflight.

I have a chart that sums up all of these figures I have gone through and points out that at every agency of the Government, every department except NASA, we are seeing cuts proposed for basic research, science, and technology in this budget that has been presented.

Given the fierce competition that U.S. businesses face from China and India and other nations, even in high technology products, this is a particularly dangerous time for America to be cutting back on support for innovation. Many of our senior industry, military, and academic leaders are expressing alarm that real Federal spending in basic research has stalled. They worry whether we are starting to lose our edge in basic scientific research. They wonder if we are losing sight of the importance of long-term investments in creating the conditions of prosperity. Their fear is that the administration's other priorities, combined with the enormous deficits we face, will squeeze out these productivity-enhancing investments. They are concerned that funding for Federal nondefense basic science and technology programs will continue to stagnate or decline. And if we allow such an erosion of America's ability to innovate, they warn, then be prepared for the wrenching, turbulent social and economic change that surely will follow.

There are many powerful arguments for expanding the basic research agenda in this country, even in these difficult economic times. I hope the Presi-

dent and this Congress will step up to the task of rethinking and realigning our budget proposals to reflect the importance of our investments in science and technology.

The greatest tragedies, of course, will be the missed opportunities. How many excellent research proposals will be left on the National Science Foundation's cutting room floor, how many fewer students with fewer National Institutes of Health grants will be pursuing research careers, how many advances in conquering disease will be slowed, and how many new lifesaving technologies will be delayed in reaching our warfighters?

This failure of intellectual leadership could not come at a worse time.

Now is precisely when we need enlightened national leaders who fully understand the value of basic research in science and technology. High-tech R&D is so enmeshed in our economy that it is part and parcel of the jobs and growth issue.

The issue of outsourcing high-tech, high-wage jobs—reverse brain-drain—has moved front and center to our economic worries. American workers, facing rising economic insecurity, are filled with anxiety and unease because they realize that almost any service that can be delivered in bits and bytes and does not require face-to-face interaction with customers is up for grabs.

We are on the brink of a new industrial and commercial world order. The successful competitors in the increasingly fierce global scramble for supremacy will not be those who simply make products faster and cheaper than anyone else. The big winners will be those who develop talent, techniques, and tools so advanced that there is no competition.

That means the United States must secure unquestioned superiority in nanotechnology, biotechnology and information technology. And that means upgrading and protecting the investments that have given us our present national stature and our unsurpassed standard of living.

Coming to grips with this issue is important if we wish to remain at the epicenter for the ongoing revolution in research and innovation that is driving 21st century economies all over the world. The reality is that in this 21st century global economy, China, India, and other nations which were once considered economic backwaters have discovered how to build strong economies around sophisticated technology. We should be concerned about our competitive position relative to our global rivals' investments in research and development. While we are limiting our budget increases in the civilian arena, other countries' investments are moving up very substantially.

In the European Union, the United Kingdom is planning on boosting its R&D spending to 2.5 percent of its gross domestic product. The French are aiming at investing 3 percent of their budget in research and development.

Spain announced an ambitious plan to lift R&D funding by 25 percent between now and 2008, while excluding military spending from the equation.

On the Pacific Rim, China is doubling the proportion of GDP it spent in the last decade on R&D, India is raising its funding of science agencies by 27 percent, and Japan is increasing its investments in life sciences research by 32 percent, while South Korea is upgrading research spending by 8.5 percent. They are resolved to reach technological parity with the West.

What do we do about these international challenges? We have absolutely no choice but to emphasize what we do best in this coming rivalry. Our most important strength has always been innovation. Our can-do spirit of commercializing technological innovation has always been America's core competence. We do it far better than anyone else. But faced with these other potential innovators on the global scene, we must start doing it even better.

As our Federal R&D commitments shrink, so too does the pool of technically trained talent, forcing industry and academia to look abroad for skilled knowledge workers. Education and training of scientists and engineers are tied to Federally sponsored research performed in the Nation's laboratories and universities.

The best course is to increase Government funding for basic research and to spend more on graduate education in science and engineering, not to spend less in these important areas, which the President has proposed. I hope those involved with the Appropriations Subcommittee will focus on this in their deliberations this spring.

America has always been a Nation built on hope—hope that we can build a prosperous, healthy world for ourselves and for our children. But it is clear that these long-standing American aspirations depend critically on our far-sighted investment in science and technology which lies at the center of this hope. Leadership in science and engineering and the world's best education and training system are essential for ensuring Americans well-paying jobs and essential for our security.

When J. Robert Oppenheimer, the renowned physicist, warned President Franklin D. Roosevelt in 1943, about Germany's plan to build an atomic weapon, FDR replied in a secret letter that "whatever the enemy may be planning, American science will be equal to the challenge." Never has a prediction been so prescient.

We know with every fiber of our being that the dominance of our fundamental research enterprise is a core American strength that must be preserved—and we must not let our position erode and compromise our future economic and national security.

By sustaining our investments in basic research, we can ensure that America remains at the forefront of scientific capability, thereby enhanc-

ing our ability to shape and improve our Nation's and the world's future.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. 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. LIEBERMAN. Mr. President, I am proud to rise today to express my support for the nomination of the Honorable Michael Chertoff to be Secretary of the Department of Homeland Security. I do so as the ranking Democrat on the Homeland Security and Governmental Affairs Committee, the committee that had the responsibility, opportunity, and honor to bring forward the legislation that created the Department of Homeland Security just a few years ago in the aftermath of the attack against America of September 11, 2001.

So any nomination of an individual to head this Department is taken with real seriousness by our Committee in general and by this Senator in particular.

Judge Chertoff has an impressive record of public service and an impressive record in the private sector as well. He has served his country as a prosecutor, an assistant attorney general, and a Federal judge. He comes to this moment in his career and to this responsibility with a reputation as a strong, intellectually demanding leader who works very hard. Those are characteristics that will serve him well if and when he is confirmed for this job for which he has been nominated.

Judge Chertoff's dedication to public service surely is illustrated by his willingness to give up a lifetime appointment to the Federal bench to take on the challenge—and it is a real challenge—of heading this critically important Department. I respect him for that. I appreciate his patriotism, and his dedication to our country and to the security of the American people.

The Secretary of Homeland Security is clearly one of the most difficult jobs in our Federal Government today, not only for the awesome responsibility it carries to safeguard the American people from terrorist attack—or in some cases natural catastrophe—but also because of the serious work that still needs to be done to make the Department, still young, the success it needs to be. Since it was created two years ago, the Department has become the leader among Government agencies protecting the American people at home, which, of course, is exactly why Congress created it.

Secretary Tom Ridge launched this process and admirably led the Department through the initial steps of merging 22 separate agencies and programs, each with a different culture, a different structure, and different prior-

ities. This was a tough, sometimes painful, job. After all, to the best of our knowledge, it is the largest governmental reorganization in half a century. We knew this transformation would be a monumental task and that it would take time for the Department to emerge as a coordinated, focused agency, even more so after—unfortunately—it became clear that the Administration was not providing the resources to this Department that it needed.

Understandably, the Department and its 180,000 employees—it is a large department—still face significant challenges in many areas, everything from its strategic vision to its day-to-day operations. But I will stop here on the Senate floor, as I have done in our committee, and thank Tom Ridge for the excellent job he did in getting this Department up and running. It still has a way to go. It is probably no longer in its infancy, it is in its childhood now, but it needs somebody to bring it to full maturity. It needs support from the Administration and Congress to enable the new Secretary to do exactly that.

The lack of a focused, long-term homeland security strategy is one of the greatest omissions thus far with this Department. No organization, especially one as large and complicated as this one, can succeed without a clear strategy and priorities. Given the importance of the Department's mission, the new Secretary will immediately need to develop an updated strategy that clarifies not only the Department's priority, roles, and responsibilities but those of other key partners as well. Consultation will have to occur with others in the administration—for instance, at the Department of Defense, the Department of Health and Human Services, and the Department of Justice to ensure an integrated and overarching vision, a kind of to-do list of how our government will tackle every dimension of defending our homeland and the American people.

One of the changes recommended by experts that our Committee has heard is the creation of an Undersecretary for Policy and Planning to perform the kind of long-range thinking within the Department of Homeland Security that has been needed. I am pleased that this Department is underway and it should ease the new Secretary's burden considerably. I know the chairman of the Committee—who is in the chamber, I am glad to note—is focused on the possibility that we may, through our Committee's work, assist the Department in doing just that.

If confirmed, Judge Chertoff and his deputies will need to have some basic tools that the Secretary is now lacking—here I am talking as fundamentally as adequate professional staff. The Secretary and the Deputy Secretary of the Department must have sufficient numbers of assistants to adequately manage 180,000 employees.

We heard testimony before our Homeland Security and Governmental

Affairs Committee that the Deputy Secretary's Office currently has five staff members. Our distinguished colleague from Virginia, Senator WARNER, a member of the committee, former Deputy Secretary of the Navy, recalled that when he was Secretary of the Navy he had a staff of well over 100 and therefore wondered how the Deputy Secretary of Homeland Security could manage with just five.

DHS employees must also be adequately trained to perform new and more complex tasks than they performed before the challenge rose on 9/11, and we must help them do that.

Looking beyond these internal problems, the Department also has to step up its efforts to eliminate persistent vulnerabilities in a variety of areas of activity, both public and private. The security of our borders and ports, for instance—they are still vulnerable. There are vulnerabilities within our rail and transit systems and at the Nation's core: energy, telecommunications, water, transportation, and financial networks. Those systems, those pieces of our national life, are not protected as well as they should be and need to be, three years after September 11, 2001.

The Coast Guard, a proud, historic agency, a service of our Government, is in dire need of having its fleet modernized. At the current rate of funding it is going to take 20 years to complete the upgrades that the Coast Guard believes it needs to take on the additional responsibilities beyond its traditional ones which it has so long performed so well, of protecting our coastlines from terrorism.

The administration must do more and we must do more with it to prepare the Nation, also, for a bioterrorist attack. This is one of those areas of vulnerability that keeps a lot of us up at night.

We must also do a better job of enlisting the private sector as a necessary partner in our shared security, since the private sector controls 85 percent of our critical infrastructure. When we think about security from terrorism, we tend to think about public infrastructure. But 85 percent of our critical infrastructure is controlled by the private sector. We need to engage them more.

We know, for example, that an attack on a chemical facility could put the lives of hundreds of thousands of our fellow citizens at risk. One estimate that I saw recently—and this is the number most often cited but it is not the total number—noted that there are 123 chemical plants in our country. If there were an accident or an attack, the resulting problem could endanger the lives of a million Americans.

Then you have to go one step beyond that. There are 700 chemical facilities, smaller than the first 123, that if there were an attack on them by terrorists, it would injure 100,000 people living around them.

Then there are 3,000 additional chemical facilities, smaller still, but none-

theless an attack on them would endanger 10,000 people living around them. Those are jarring numbers, and all the more so because we know from published information that al-Qaida has examined and sought information about chemical facilities here in this country. Yet according to testimony given to our committee by Richard Falkenrath, who served as deputy homeland security adviser to the President, now at a think tank here in Washington, he said: "We have done essentially nothing"—and that is the word he used—"to reduce the inherent insecurity of our chemical facilities."

We have the most advanced and powerful and effective military in the world, in the history of the world. One of the reasons is that we have the most extraordinary trained, patriotic, brave soldiers, military service men and women. But another reason is that we have invested hundreds and hundreds of billions of dollars—trillions of dollars—over the years, to give us the most powerful military in the history of the world to protect our security around the world.

On September 11, 2001, we found that notwithstanding all of that protection, we could be attacked right here at home. So we must invest in our homeland security if it, too, is to be the best in the world, particularly since those fanatics, as someone else has said, hate us Americans more than they love their own lives. They hate us more than they love their own lives and so are prepared to give their lives as we saw on September 11 to take some of ours.

They are so focused on America that we need the best homeland defense in the world. Last year, I believe—in a budget that was in some ways shocking—the administration proposed cuts for first responders. Now those cuts are increased. That is, funding for first responders, believe it or not, is further reduced in the budget submitted by the President last week for fiscal year 2006. That is wrong. We are all aware of the funding realities and the deficit situation of our Government. We also know that it is impossible to protect every potential terrorist target. But our first responders in particular, who risk their lives so the rest of us may be safe—in many ways the first preventers of terrorist attacks—they deserve the training and equipment they need to do their jobs for us.

They have to have the basic capability to talk to one another. We saw this most painfully in the World Trade Center, that the inability for law enforcers, first responders, to talk to each other led—according to independent experts—to the loss of too many lives of first responders who were on the scene.

That was not the first time that happened. We really need to do all we can from the Federal Government to enable our first responders—police, firefighters, emergency medical personnel—to have interoperable commu-

nications equipment. What does that mean? In a crisis, quite simply, to be able to talk to one another. We have to explore technological breakthroughs that can enable us to make that possible at the lowest possible cost.

This is a daunting list of responsibilities, of work on homeland defense yet undone, that will face the new Secretary of Homeland Security. But it is real, and I do believe, to help Judge Chertoff achieve these aims quickly, all of us need to regain that sense of anger, hurt, resolve, urgency that propelled us forward as one in the aftermath of September 11.

I am confident Judge Chertoff, too, feels that sense of urgency and will act upon it. That is most certainly the conclusion I reached when he appeared before the Homeland Security and Governmental Affairs Committee to answer quite an array of questions from committee members, including several on his role in the prosecution of the war on terror and the advice he provided on anti-torture laws when he was head of the Justice Department's Criminal Division. Judge Chertoff assured us that he was mindful of the historic tension between two values, two attributes that define us as a nation, which is to say life and liberty, and the need to protect ourselves against those who would deny us either one.

I thought his exact words were eloquent and right to the point and very reassuring, so I quote Judge Chertoff. He said:

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

Striking the right balance will be an ongoing challenge.

I am pleased that those who know him best say Judge Chertoff is more than up to the task. His background in the law prepares him to balance security and liberty. His record, not just as a law enforcer but as a law clerk for former Supreme Court Justice Brennan, certainly prepared him to protect our liberty while enhancing our security.

When our colleague and friend from New Jersey, Senator CORZINE, introduced Judge Chertoff, his friend, before our committee at the hearing we held on this nomination, he referred to Judge Chertoff's work with the New Jersey State Senate investigating and legislating against racial profiling. Senator CORZINE described that experience as, "a test of balancing the protection of the American public or protecting the New Jersey public and our civil liberties."

No one, he said, could have balanced those competing interests "more intelligently" than Judge Chertoff had.

I also welcomed Judge Chertoff's expression of his belief on the Office of Legal Counsel's definition of torture from the August 2002 memo written by Assistant Attorney General Bybee—as discussed during the nomination proceedings for Attorney General Gonzales—Judge Chertoff expressed before our committee that he felt the

Bybee definition of torture was too narrow.

Of course, I and others are troubled by how the Justice Department handled the detention of numbers of Muslim men and Arabic men who were rounded up in the aftermath of September 11. It has been extensively documented and validated and backed up by an Inspector General report that many of the detainees were held under the flimsiest of pretexts, were incarcerated for a long time without having their cases investigated, and often denied access to lawyers and family members.

According to the Inspector General's report, some of them were actually physically abused by guards in the prisons where they were held. Judge Chertoff, in his testimony before our committee, said he felt that mistakes were clearly made in the detention and treatment of those detainees.

I wish the Department of Justice had acknowledged the same failures when the Department of Justice Inspector General released its report in 2003. I hope and have confidence that the Department of Justice has learned the same lesson that Judge Chertoff told us before our committee that he has learned from that experience.

Judge Chertoff said when he appeared before us that while the PATRIOT Act has engendered great public opposition, the evidence does not back up the fear that it would be used to deprive large numbers of people in this country of their fundamental liberties. On the other hand, the apprehension and taking into prison of more than 700 Arabic and Muslim men in the aftermath of September 11 and the way in which they were not just taken into custody but the denial in a very un-American way of basic due process guaranteed by the Constitution proves something to us—that some of those so concerned about the PATRIOT Act also ought to look at the absence of due process protection in our immigration laws, which have been used to deprive people of their constitutional rights. We ought to act to close those gaps in those immigration laws.

There are also lessons that I know others can take and will take from the episode, as Judge Chertoff did in his previous position at the Department of Justice.

As Secretary of Homeland Security, Judge Chertoff will be running a department with many different agencies with many different missions. Included within the Department are the agencies that deal with our Nation's immigrant community. That relationship must not—and according to law should not—be based primarily on prosecution and law enforcement. We are, after all, a nation of immigrants. Those of us who ourselves, our parents, or our grandparents were lucky enough to come to this country ought not to forget that history, and ought to treat immigrants today with the same respect our fami-

lies expected as well. I have every confidence Judge Chertoff understands that and will conduct this Department accordingly.

I am voting for Judge Chertoff, as I have said, because I believe he is the right man for this job. But I do not want that decision to obscure the fact that I share some of the concerns—more specifically, objections—that Senator LEVIN has expressed this afternoon and previously to the Justice Department's and the FBI's unwillingness to share with members of the Committee an uncensored version of the document Senator LEVIN referred to earlier, which says that certain employees of the Criminal Division of the Justice Department were at a meeting with representatives of the FBI in which the FBI members who had been at Guantanamo expressed concern about the way in which detainees were being treated there.

This is in part the ongoing dialog between Administrations and Congress over most of our history about the sharing of information. But I must say it is the latest chapter or episode in a rather intense series of conversations between this particular Administration and Congress because of its reluctance to share information with Congress that I believe, as representatives of the people, we have a right to expect. This has particularly been the case with our Homeland Security and Governmental Affairs Committee—during the time I was chairman of the committee as well as ranking member—when we conducted oversight, or were considering nominations. Senators duly elected by their States certainly have a right to see the material they believe necessary to carry out their constitutional duty regarding advice and consent, unless there is a Presidential invocation of executive privilege, or some other clear statutory prohibition on sharing the particular information which Members of the Senate feel they need to carry out their responsibilities. In this case, the President does not claim privilege.

The statute which the Justice Department cites for being unwilling to share the names currently redacted from this document of FBI personnel who were at this meeting pertaining to what has been happening at Guantanamo—the Privacy Act—in my opinion simply doesn't apply. The Privacy Act, I have always believed, was there to protect the privacy of individual Americans, not the names of Federal employees whom Senators believe they needed to know to carry out our constitutional duties of advice and consent.

Indeed, as the Senator from Michigan has pointed out, the Justice Department's position that the Privacy Act requires the administration to withhold the names of high-level Government officials from a document and from simply mentioning the officials attending an official meeting, would be to allow for a stunning expansion of the Privacy Act that could thwart even

the most basic of congressional oversight activities.

In other words, in any number of areas where Congress might want to exercise our responsibility to oversee our Government, perhaps to prevent fraud or the waste of billions of dollars of taxpayer money, to say that you cannot get the name of an individual at a meeting because of the Privacy Act would be truly unbelievable, and unacceptable, unsustainable expansion of the Privacy Act. Therefore, I associate myself with that part of Senator LEVIN's expression of concerns. I hope every Member of the Senate will pay some attention to what Senator LEVIN has said regarding this because it undercuts the authority of the Members of the Senate to act. The Privacy Act was not meant to do that.

Having said that, why do I nonetheless go ahead and strongly support Judge Chertoff? I believe Judge Chertoff in his testimony before the committee responded to concerns that something in that redacted document might disqualify him for this position. In the first place, he was not at the meeting. Second, in response to questions filed with him after the hearing and general statements he made at the hearing, he specifically said under oath to the best of his recollection he was never informed while head of the Criminal Division of the Justice Department that there was any mistreatment of detainees at Guantanamo. I accept that statement given by a Federal judge under oath.

I truly resent the withholding of the names of the people who were at that meeting from the Senate. I conclude, nonetheless, that this document does not at all go against Judge Chertoff's otherwise extraordinary qualifications to lead this Department.

These are, obviously, not ordinary times. We are in a new chapter of our history. In some sense every American feels insecure, more insecure than before September 11. We have done a lot of things to raise people's sense of security, including the capture of so many members of al-Qaida, our victories militarily in Iraq and Afghanistan, and the setting up of the Department of Homeland Security. This is, nonetheless, a department whose leadership demands an extraordinary commitment. Judge Chertoff has made that commitment, and he will bring to this position an admirable record. He is a very strong choice to lead the Department of Homeland Security's continuing transformation into a strong, cohesive, well-operating force to secure the safety of the American people; therefore, I urge all of my colleagues to support this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank my good friend and the ranking Democratic member on the committee for his statement. He has applied his usual good judgment in coming to the conclusion that Judge Chertoff deserves

his support and in urging our colleagues to vote for him when the vote finally occurs tomorrow.

The Senator from Alabama is seeking to speak on the nomination. I yield 15 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the chairwoman of the committee, Senator COLLINS, for the leadership she and the Senator from Connecticut have given to a number of issues and the fact that they both have agreed Judge Chertoff should be confirmed as Secretary of Homeland Security. Judge Chertoff was reported out of committee without opposition.

The Homeland Security Secretary has three primary missions: One, to prevent terrorist attacks within the United States—to protect our homeland, to reduce America's vulnerability to terrorism, and to minimize the damage from potential attacks and natural disasters in our country. It takes a special individual to lead this Department. In my view, Judge Chertoff represents one of those special individuals.

Judge Chertoff knows Rudy Guiliani, former mayor of New York and himself a former high official in the Department of Justice and U.S. attorney. I remember, when Rudy was leaving as U.S. attorney, someone asked him about his successor and who it should be and what he should be. He simply said this: Well, I hope they appoint somebody who can contribute to the discussion every now and then.

Judge Chertoff can contribute to the discussion about homeland security issues. He has an extraordinary record, and he is one of the most able lawyers in America and one of the most committed lawyers in this country to public service. He graduated—I know the Presiding Officer is a Wake Forest man; it is a great law school—but he went to Harvard, graduated from undergraduate school magna cum laude in 1975, and also from Harvard Law School in 1978 the same—magna cum laude. Top of his class at Harvard Law School.

He then clerked for a circuit judge on the Second Circuit Court of Appeals. It is always quite an honor for a lawyer graduating from any law school to be accepted to clerk for one of those judges. Not only that, he was one of the very few—a rare few—chosen to clerk for a Justice on the U.S. Supreme Court. He clerked for Justice William Brennan on the U.S. Supreme Court. He comes at this with, certainly, proven academic and intellectual abilities to handle the job.

Judge Chertoff has had great experience in areas that provide him an opportunity to learn many of the things necessary to be a successful Secretary of Homeland Security. He started out as an assistant U.S. attorney in the Southern District of New York, which they like to think is “the” Southern District of New York. When I was U.S. attorney in the Southern District of

Alabama, I always thought we were “the” Southern District. They certainly always had the reputation of hiring some of the best lawyers in America. It was very competitive to be selected as an assistant U.S. attorney in the Southern District of New York. He did a great job there. He then moved to New Jersey to become first assistant U.S. attorney. That is a big deal.

By the way, when he was in the Southern District of New York, he prosecuted mafia cases, organized crime cases, racketeering cases and major fraud cases. He was clearly involved in some of the most significant cases in that most significant district of Federal law enforcement in the country.

He goes to New Jersey as the first assistant U.S. attorney. As such, he was the right arm of the U.S. attorney. In fact, he took on a great deal of the responsibilities in that very large office. There is just one office for the entire State of New Jersey. He did a good job there.

Soon he was appointed U.S. attorney—the boss—of that office by President Bush. He served with distinction. At one time, he prosecuted the very famous Mafia Commission case which charged the bosses of all five New York La Cosa Nostra families with operating a pattern of racketeering such as extortion, loan sharking, and murder, one of the biggest cases ever brought against mafia. He prosecuted one of the more important cases, criminal cases, that has been brought in the United States, I suspect in the century; I would say it was at least in the top 50 most important cases in the century. The case was prosecuted under his leadership there. He did a lot of other cases of that kind.

He served as counsel to the committee on Whitewater. He handled himself well there. As such, he has learned the responsibilities of public service: to handle yourself carefully and conduct yourself with high standards. He won a good report, from everyone who watched the conduct of his activities on that committee, as being a fair and able attorney—in general, and I think he won great acclaim for that.

One of the key characteristics of a Secretary of Homeland Security is that they understand State and local law enforcement and governmental agencies, that they can work with them, that they can get them together and talk with them and communicate with them. To do that, when you take the office, you need to understand those agencies, what they are about, what their responsibilities are, and how they operate.

Judge Chertoff, first as an assistant U.S. attorney and then as a U.S. attorney, had as his duty to work with State and local agents. Each U.S. attorney is required to form and moderate and lead a law enforcement coordinating committee. He did that in the State of New Jersey. I suspect he knows the sheriffs

and the chief law officers throughout that State, and probably in New York, too, on a first-name basis. You have to do that in that position. He understands their difficulties, and he understands the challenges and the responsibility of the Federal Government to work with and to utilize the capacities of State and local law enforcement.

Indeed, most of the law enforcement officials in America, by far, are in State and local government, probably 90 percent. We can never be effective against terrorists, people who come here illegally to harm our country, without being able to work with and utilize and support State and local law enforcement. He understands that very clearly.

I believe that will be one of his best characteristics that will help him achieve the job of making this entity known as Homeland Security work.

I must say, when this new Homeland Security Department was formed, as one who worked with many of the agencies that were brought into it under one new Secretary, I knew that it was going to be a challenge, a very real, difficult challenge. Agencies were brought in that Department, such as Immigration, Customs, and others, to all work together with other agencies, such as the Coast Guard, to try to fight terrorism and defend our homeland. That is a difficult task. Agencies do not work well together. I remember the difficulties it took just to get our Federal agencies to work together when I was a U.S. attorney. I know Mr. Chertoff saw the same thing in his office.

Now he will have the responsibility of melding these agencies together and have them work effectively and efficiently for a common goal. It will not be easy. Most Americans probably would be surprised to know they communicate with one another like foreign nations. They sit down and sign memoranda of understanding or a treaty or something on how they are going to handle this or that problem. I exaggerate a little bit in the sense that at the grassroots level, most of the agents, the various agencies, work together for the common good, but there clearly is a bureaucracy problem of all Federal agencies, and it is a real challenge to reform this new Homeland Security Department. Mr. Chertoff, having first been an assistant U.S. attorney and then having been a U.S. attorney and serving as the Chief of the Criminal Division in the U.S. Department of Justice, understands that. He has lived with it. Nobody who has held that position could be naive about the difficulties of these issues. He, I am sure, had to work through them in the past, and he will hit the ground with no misconceptions about the challenge, no misconceptions about the good qualities of Federal law enforcement and other officers throughout our country, but with no misunderstanding about how difficult it is to make these bureaucracies merge. So I believe that is

going to be one of his great challenges, but he has the experience and ability to make it to work.

I, frankly, am one who is of the opinion that if a person has been in the field actually prosecuting cases, actually working at night with IRS agents and Customs agents and Immigration agents and FBI agents and DEA agents, and all of these law enforcement officers, dealing with their supervisors and bosses, they know something that somebody who has never done that cannot understand. They have a comprehension of the difficulty of our Government to work efficiently and productively. They also, if they are good at it, have proven to be successful at it. That is how you judge success in leadership, such as being a criminal division chief or a U.S. attorney—how well you can get these agencies to work together.

So I am excited about that. I have known him for a long period of time. I can say, without hesitation, that when he was selected as U.S. attorney in New Jersey, and I was a U.S. attorney myself at that time, everyone knew that was a promotion on merit. His reputation for excellence and skill and legal ability had been known throughout the Department of Justice for some time. His appointment there was received throughout the entire Department of Justice with great pride and hope for success. And indeed, he had a highly successful record.

So I just want to say from my personal experience with him, having served with him, having known him for many years, and having known his reputation among those who worked closely with him, that he has all the gifts and graces that are required to be a great Secretary of Homeland Security.

I know they say: Well, he should turn over these documents. First, let me say this: They are not his documents. These are documents of the U.S. Department of Justice, memorandums they have. There is a legitimate concern about Members of this Congress using every confirmation we have to see what they can drag out so they can dig through memoranda and documents that represent private conversations within the executive branch.

What would we think in the Senate if the President got mad at us and said: I want to see every document that was sent between you and your legislative assistant on all these issues. We would not like that. We would say: Well, we ought to have some right to talk to our staff and communicate with one another and have private conversations and think through these issues. If we tell our staff that everything they say is going to be made public the next day or they cannot put something in a memorandum because it may be on the front page of a newspaper the next day, maybe that would diminish the natural quality of our communication. In fact, it might inhibit good communication.

Back on February 7 of this year, the Department of Justice responded to

this request that was sent to Mr. Mueller of the FBI. It requested "the unredacted version of a classified three-page FBI document, dated May 10, 2004, regarding the interrogation of detainees at Guantanamo Bay." The Justice Department's response was this. It was not Judge Chertoff's response. He has been on the Federal bench as a Federal judge, with a lifetime appointment, which he is willing to give up, from the appellate court, a highly prestigious thing in itself, to serve his country to be involved in protecting this country.

Indeed, when asked why he was willing to do that, he said: When asked to serve in a way to protect my country, I could not say no.

They said this:

We have carefully considered your request, but concluded that the unredacted document cannot be released in response to your request because it contains information covered by the Privacy Act, 5 United States Code 552a, as well as deliberative process material.

That is not an insignificant matter. Deliberative process material involves efforts by the executive branch to study an issue, to deliberate on it and formulate a position.

The decision an agency makes is public, but everything they do in deliberating that should not be produced willy-nilly just because somebody in Congress wants to go on a fishing expedition.

It goes on to say:

We note, however, that the document is comprised of FBI messages that were not sent by or addressed to Judge Chertoff and it contains no reference to him by name or otherwise.

I don't think this is anything unusual and dramatic and unexpected that this document should be rejected. I believe the Department of Justice has considered it carefully and rendered an opinion that is fair and just. I support them on it. I know there are certain times documents need to be produced, but there are reasons why documents should not be produced willy-nilly. The Department has considered this carefully and rendered this opinion.

I admire Judge Michael Chertoff. He is a first-rate lawyer. He is a man of incredible experience. As chief of the Criminal Division of the Department of Justice, he had an opportunity to see firsthand the difficulties and challenges of the war against terrorism. He performed admirably in that position, as he has in every other position he has held in our Government. He can make so much more money in private practice. He could take a quiet position and stay as a lifetime-appointed Federal circuit judge. But he turned that down to serve our country. This Nation will benefit from his service. I am so glad the committee voted to refer him out positively. I am confident he will be confirmed.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Maine.

Ms. COLLINS. Mr. President, I thank my colleague from Alabama for his excellent statement. I appreciate the perspective he brings. Given his own experience as a U.S. Attorney, he has a special appreciation for that part of Judge Chertoff's career, and his endorsement will carry a lot of weight with our colleagues.

How much time is remaining for the debate today?

The PRESIDING OFFICER. The Senator from Maine has 76 minutes remaining. The minority is out of time.

Ms. COLLINS. Mr. President, I inquire of the Presiding Officer, the 76 minutes is for today's debate, as opposed to tomorrow's; correct?

The PRESIDING OFFICER. The Senator is correct.

Ms. COLLINS. Mr. President, I know of no further requests for time on our side this evening so I am prepared to yield back, and I do, the 76 minutes.

The PRESIDING OFFICER. Time is yielded back.

Ms. COLLINS. I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

Ms. COLLINS. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

#### PASSAGE OF THE CLASS ACTION FAIRNESS ACT

Mr. GRASSLEY. Mr. President, I would like to thank my colleagues for supporting S. 5, the Class Action Fairness Act, which we passed last week and which is set to be considered in the House this week. This little bill that Senator KOHL and I first introduced back in the 105th Congress is finally at the finish line. Little did I know it was going to take five Congresses to get it done. But we had to do it. The abuses in the class action system are real, and this is a good first step at fixing some of them.

Although the Class Action Fairness Act was always a bipartisan bill, we had to negotiate numerous compromises to garner enough support to defeat a filibuster here in the Senate. In the end, this bill is a good example of what we can accomplish when we work together in a bipartisan fashion. The final passage vote of 72 to 36 is proof positive of that.

So I am pleased that we are on the verge of getting class action reform to the President's desk. There are many