

would have provided a path to secure that cooperation.

The refusal of Democrats to allow consideration of these amendments is nothing short of irresponsible behavior towards the security of America.

The Democrats' refusal to limit debate on the majority leader's border security bill today confirms their lack of understanding regarding the need for border security. Senator FRIST's Securing America's Borders Act includes 1,250 new customs and border protection officers, 1,000 new DHS investigative personnel, 1,250 new DHS port of entry inspectors, 1,000 new Immigration and customs enforcement inspectors, and 2,400 new border patrol agents. The bill authorizes funding for new border security technologies and assets, including new unmanned aerial vehicles, vehicle barriers, cameras, sensors, and all-weather roads. This bill would have addressed many of our border security needs, and I am frustrated that we were not allowed to vote on this bill.

As it stands now, we will not see any of the comprehensive border security improvements that New Mexico and other States desperately need. I could not be more disappointed.

On February 10, 2005, I introduced legislation to create additional Federal district judgeships in the State of New Mexico.

On November 17, 2005, I introduced the Border Security and Modernization Act of 2005, S. 2049, with bipartisan support. That bill calls for improvements to our port of entry infrastructure, increased Department of Homeland Security, DHS, and Department of Justice personnel, new technologies and assets for border security, increased detention capacity, and additional Federal assistance for States.

On February 17, 2006, I introduced the Welcoming Immigrants to a Secure Homeland Act. That bill calls for an increase in the number of DHS personnel who investigate human smuggling laws, employment of immigrants, and immigration fraud and increased penalties for violations of immigration laws. It also creates a new guest worker visa that lets individuals who want to, come to the United States to work. Lastly, it creates a way to account for the millions of undocumented aliens residing in the United States without creating an automatic path to citizenship.

I supported the efforts to jointly address border security and immigration reform legislation, but I am convinced that if we cannot agree regarding immigration reform, we must still secure our borders. The President must budget for our border needs, and Congress must appropriate for those needs.

## EXECUTIVE SESSION

## NOMINATION OF DORRANCE SMITH TO BE AN ASSISTANT SECRETARY OF DEFENSE

Mr. FRIST. Mr. President, in executive session, I ask unanimous consent that the cloture motion be withdrawn with respect to Calendar No. 485, and that the Senate proceed to its consideration; provided further that there be 55 minutes for debate as follows: Senator WARNER 10 minutes, Senator LEVIN 25 minutes, Senator HARKIN 10 minutes, and Senator REED 10 minutes.

I further ask that following the use or yielding back of time, the Senate proceed to vote on the confirmation of the nomination; provided further that the Senate then proceed to the vote on invoking cloture on the nomination of Calendar No. 252.

Finally, I ask unanimous consent that if either nomination is confirmed, the President be immediately notified of the Senate's action.

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

The clerk will report the nomination.

The assistant legislative clerk read the nomination of Dorrance Smith, of Virginia, to be an Assistant Secretary of Defense.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to speak for up to 5 minutes as in morning business.

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

## IMMIGRATION REFORM

Mrs. HUTCHISON. Mr. President, I want to comment on what has happened over the last 2 weeks on a very important bill—maybe the most important bill for the future of our country that we will take up this year, and that is immigration reform.

I was very disappointed that we were not able to have a vehicle on which we can have amendments in the normal course of action that we have on the floor of the Senate. I cannot think of a more complicated, comprehensive issue that we could amend and make a better bill that would have the support of the vast majority of the Senate. Yet we have spent 2 weeks and were only able to have three amendments.

There are many differing views on what to do with the 12 million illegal immigrants that are in our country. But I think there is a consensus that we need better control of our borders, that we need security measures to know who is in our country, and that

we need a guest worker permit program that would allow people to come into our country legally to work and earn a living for their families, contribute to the economy of the United States, and perhaps become citizens, if they decide to, or not become citizens if they wish to remain citizens of their home country.

However, the issue of what to do with the 12 million people was not able to be discussed, debated, or refined on the Senate floor. I think that is a mistake, and I think we have missed a very important opportunity. The negotiations got down to allowing 20 amendments—20 amendments—on one of the most complicated bills that we will take up this year. We take up appropriations bills that have 70 amendments. We take up authorization bills that have 40 amendments. The negotiation was down to allowing 20 amendments, and we were not able to get the consent of the minority to take up 20 amendments to try to refine a bill that would allow the Senate to speak with an overwhelming majority, or at least to have all the voices heard so that we could start beginning to craft a bill that would help with an issue in our country of security and economics.

Mr. President, I am very disappointed. I think we have missed an opportunity. I hope very much that, as we go home for a 2-week break, we will think about how we can come together, come back here and not give up on having an immigration reform bill that secures our borders, that creates a guest worker program that will be productive for the participants and for the economy of our country, that will not displace American jobs but will welcome the immigrants who seek to come here, as we have done for over 200 years in our country on a regularized basis.

I thank the chairman of the Armed Services Committee. I know he is going on to very important work. I hope that we can address this issue when we return, and I hope the minority will work with the majority not to block future amendments that would make this a better bill.

I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, we wish to confine ourselves strictly to the time the joint leadership agreed upon in the event we need recorded votes.

Mr. President, Dorrance Smith, the nominee, is designated to be the principal advisor to the Secretary of Defense on matters relating to public affairs in the media. Mr. Smith is a four-time Emmy Award-winning television producer, a political consultant, and a media strategist who has worked for over 30 years in television and politics. He spent 9 months in Iraq, in the years 2003 and 2004, where he served as senior media advisor to the setup at that time.

He was responsible for developing a state-of-the-art communications facility in Baghdad for the Coalition Provisional Authority and a public diplomacy strategy for the U.S. Government. In addition, Mr. Smith was asked to overhaul certain aspects of the Iraqi media network, which he did. He was quite successful, such that they had a television channel that was launched on satellite.

For those efforts, he was awarded by the Secretary of Defense a medal for exceptional public service.

I have met with Mr. Smith on several occasions. I believe him to be highly qualified, and I fully support his nomination.

At a full Armed Services Committee hearing on October 25, 2005, and later, at an Executive Session on December 13th, at which Mr. Smith was present, he was questioned about an Op Ed article he wrote that appeared in the Wall Street Journal on April 25, 2005, which I also attach. In this article, based on his in the trenches experience as Ambassador Bremer's Senior Media Advisor in Baghdad, Mr. Smith questioned the practice relied on by major media outlets in the United States of airing video of insurgent attacks supplied by the Arab satellite news channel Al Jazeera. Mr. Smith has clarified his intent about the role of U.S. Networks in his in raising these issues for discussion and public scrutiny. He has emphasized publicly that he has never written or stated that the United States networks aid and abet terrorists. In this regard, I have attached Mr. Smith's response to a question for the record he provided after the hearing.

I ask unanimous consent that a biography of Dorrance Smith, and some questions and answers during his nomination hearing be printed in the RECORD.

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

#### DORRANCE SMITH

Dorrance Smith is a four-time Emmy award winning television producer, political consultant, and media strategist who has worked over 30 years in television and politics.

Mr. Smith spent nine months in Iraq in 2003-2004 Senior Media Adviser. He was responsible for developing a state of the art communications facility in Baghdad for the Coalition Provisional Authority and a public diplomacy strategy for the United States government. In addition, Mr. Smith was asked to overhaul the fledgling Iraqi Media Network. By April, 2004 this effort was deemed so successful that the terrestrial channel—AI Iraqiya—was launched on satellite. For his efforts he was awarded the Secretary of Defense Medal for Exceptional Public Service.

A four time Emmy Award winning ABC News and Sports producer, he has held a number of positions at the network, including serving as the first executive producer of "This Week with David Brinkley."

From 1989 until 1991, Smith was the executive producer of ABC News "Nightline." During his tenure he was responsible for the weeklong "Nightline" series originating from South Africa, which covered the release

of Nelson Mandela. The broadcasts won an Emmy award. In addition he served as executive producer of the prime time special "Tragedy at Tiananmen—The Untold Story," which was honored with the DuPont Columbia University Award, the Overseas Press Club Award and an Emmy. "Nightline" also won an Emmy in 1991 for outstanding news coverage of the Iraqi invasion of Kuwait.

Prior to his work on "Nightline," Smith was the executive producer of the number one rated Sunday public affairs program, "This Week with David Brinkley," a post he held from the program's inception in 1981 until 1989. During his tenure the broadcast received the first Joan Barone Award, the George Foster Peabody Award, and was named the Best National TV Interview Discussion Program by the readers of the Washington Journalism Review.

In 1991 Smith left ABC News to become Assistant to the President for Media Affairs at the White House. In this capacity Smith handled all television and radio events involving President Bush, members of the White House staff and Cabinet. In addition his office handled all regional media; coordinated media strategy for administration officials seeking confirmation; and organized the debate preparation during the 1992 political campaign.

In 2001, Smith was designated by FEMA Director Joe Allbaugh to handle all media following the events of September 11th. In this capacity Smith was responsible for FEMA's media strategy for print, radio and television. Smith organized and distributed the now famous FEMA video feeds from Ground Zero. He reorganized the Public Affairs Office to meet the post September 11th media demands.

At ABC News, Smith became executive producer of all weekend news programming in 1980. He was responsible for the production and programming of "World News Saturday," "World News Sunday," "The Weekend Report," and "The Health Show."

Prior to his weekend assignment, Smith was Washington producer of ABC News' "The Iran Crises: America Held Hostage." He also served as ABC News Senior Producer at the 1980 Winter Olympics, the 1984 Winter and Summer Games, and the 1988 Winter Olympics in Calgary.

From 1978-1979, Smith served as ABC News' White House producer. Smith joined ABC News as a Washington producer in 1977. Previously he was staff assistant to President Gerald Ford.

He began his broadcasting career at ABC Sports in 1973 as an assistant to the producer. In 1974 he was made Manager of Program Planning for ABC's Wide World of Sports.

Smith is a member of the Advisory Council for the George Bush Library in College Station, Texas.

He graduated from Claremont Men's College in 1973 with a Bachelor of Arts degree. He lives in McLean, Virginia.

NOMINATION HEARING FOR MR. J. DORRANCE SMITH, SENATE ARMED SERVICES COMMITTEE, OCTOBER 25, 2005

Member: Senator John Warner, Witnesses: Young, Smith, Etter, Bell, Smith

#### Question #1

#### ARAB SATELLITE NEWS

Question: 1. Mr. Smith, on April 26, 2005, you wrote an article for the Wall Street Journal titled "The Enemy on our Airways." In the article you stated that "... Al-Jazeera continues to aid and abet the enemy ..." Have you ever stated or written that U.S. broadcast networks have aided or abetted terrorists by airing video that first ap-

peared on the Arab satellite news channel? Do you believe this to be the case?

Answer: I have never written or stated that the United States networks aid and abet terrorists by airing video that first appeared on the satellite news channel Al-Jazeera. I did write an Op Ed piece in April, 2005 for the Wall Street Journal which raised a number of questions following the airing of hostage video by Al-Jazeera and all 6 U.S. news networks. In that piece I wrote, "the battle for Iraqi hearts and minds is being fought over satellite T.V. It is a battle we are losing badly. And I wrote, "As long as Al-Jazeera continues to aid and abet the enemy, as long as we are fighting a war on the ground and in the airwaves, why are we not fighting back against Al-Jazeera. . . ."

My past experiences running the Iraq Media Network in Baghdad gave me insight into the communications strategy of our enemy. Raising the tactics of the enemy in a newspaper piece was an effort to spur public discourse. I believe the public, the networks and policy makers should examine the tactics of the enemy including providing video to the Arab satellite network with the knowledge that it will be broadcast in the United States as well. Understanding the communications strategy of the enemy is a prerequisite to developing a communications strategy that is effective. In the WSJ, I was not writing as a policy maker or government official, nor was I a candidate for the Public Affairs job at the Pentagon.

Newspaper accounts that I believe the U.S. networks aid and abet terrorists are incorrect. When asked at the confirmation hearing "But you think it's a fair characterization now to say that the networks in the United States aid and abet terrorists by showing that," I said, "No, I do not." That is and always has been my belief.

I worked in network television for over 22 years and I maintain a professional working relationship with the today. During my nine months with the CPA in Iraq, I worked very closely with U.S. networks to meet their coverage needs. Most recently I was a media consultant to the United States Senate for the Joint Congressional Committee for Inaugural Ceremonies (JCCIC). For four months I represented that institution to the U.S. network pool with the aim of producing the best event for both parties. After the inauguration Tom Shales wrote in the Washington Post, "ABC's Peter Jennings noted that for the relatively few viewers able to see them in high-definition TV, the images were often "fabulous." Indeed they were.

As a network executive I appreciate the difficult decisions facing journalists during wartime especially potential conflicts between journalistic integrity and national security. If confirmed, I look forward to conducting my relationship with U.S. networks in a professional and respectful manner as I did when working in Iraq for nine months and for JCCIC. I also look forward to working closely with this committee on these important issues.

Do you agree with these goals?

Yes, I support the goals of the Congress in enacting the reforms of the Goldwater-Nichols legislation.

Do you anticipate that legislative proposals to amend Goldwater-Nichols may be appropriate? If so, what areas do you believe it might be appropriate to address in these proposals?

I am unaware of any need to modify Goldwater-Nichols at this time. If I am confirmed, I will raise any such requirements that I may identify within the Department. The Department would consult closely with Congress, especially this Committee, on any changes that might be appropriate.

## DUTIES

What is your understanding of the duties and functions of the Assistant Secretary of Defense for International Security Policy?

I understand that, if I am confirmed, my duties as Assistant Secretary of Defense for International Security Policy will be to serve as the principal assistant and advisor to the Under Secretary of Defense for Policy in formulating and implementing national security and defense policy in a wide range of areas, including: nuclear forces; technology security; missile defense; Europe and NATO; Russia, Ukraine, and Eurasia; arms control, non-proliferation, and counter-proliferation.

Assuming you are confirmed, what duties and functions do you expect that Secretary Rumsfeld would prescribe for you?

I would expect Secretary Rumsfeld to look to the Assistant Secretary of Defense for International Security Policy to fulfill all the duties assigned to that office under the authorities of the Secretary of Defense and the Under Secretary of Defense for Policy in particular, assistance and advice on the formulation of national security and defense policy in the areas noted in the response to the previous question.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I yield myself 15 minutes to speak on the nomination of Dorrance Smith to be Assistant Secretary of Defense for Public Affairs.

I oppose this nomination for a very critical reason, which is that Dorrance Smith has spoken out against the very media in the United States that he would be involved with, engaged in, as the public affairs official for the Department of Defense.

Mr. Smith has shown in his writing and in his testimony before the Senate Armed Services Committee that he believes that our media undermines our national security when they perform their legitimate role of providing newsworthy information to the public about what is going on in Iraq and Afghanistan. He has gone so far as to accuse our major networks of acting in partnership with al-Qaida.

That extreme position is not appropriate for the spokesperson of the Department of Defense. This is what Mr. Smith said in his April 25, 2005, article in the Wall Street Journal, entitled "The Enemy on Our Airwaves," in which he complained about what he called "the ongoing relationship between terrorists, Al-Jazeera, and the [major U.S. television] networks." The basis of this alleged relationship is the fact that the networks played video of hostages in Iraq, which Al-Jazeera allegedly obtained from terrorist sources.

The text of Mr. Smith's article leaves little doubt about his belief that the "enemy on our airwaves" are our major television networks themselves, all of them—ABC, NBC, CBS, FOX, CNN—all of them. Here is what Mr. Smith said in this article:

Osama bin Laden, Abu Musab al-Zarqawi, and al-Qaida have a partner in Al-Jazeera and, by extension, most networks in the U.S. This partnership is a powerful tool for the terrorists in the war in Iraq.

That is the view taken by the proposed spokesperson for the Department of Defense—that our networks are partners with Osama bin Laden, the man who orchestrated the slaughter on 9/11.

The smear then continues as Mr. Smith raises "ethics" issues about the conduct of the media.

The arrangement between the U.S. networks and Al-Jazeera raises questions of journalistic ethics. Do the U.S. networks know the terms of the relationship that Al-Jazeera has with the terrorists? Do they want to know?

What if one of the networks had taken a stand and refused to air the [video of an American hostage] on the grounds that it was aiding and abetting the enemy, and from that point forward it would not be a tool of terrorist propaganda?

Mr. Smith is entitled to his views. I will defend that right any day and any place. But we should not confirm him to represent the Department of Defense to the very media that he calls a partner with our deadly enemy, al-Qaida. That is over the top. It is extreme. It is not the kind of view that should be represented by the Department of Defense in their dealings with the media.

The Armed Services Committee held a hearing on Mr. Smith's nomination on October 25, 2005. At that time, I asked Mr. Smith about his statement that Osama bin Laden and al-Qaida "have a partner in Al-Jazeera and, by extension, most networks in the United States." Mr. Smith testified that he still believes this statement to be a fair characterization of the relationship between the networks and al-Qaida. He insisted that "there is a relationship that exists" and "the relationship is a cooperative one."

I pressed him:

Does this "relationship" make the networks partners of our terrorist enemies, as you wrote? Do you really believe this, that they are partners?

Mr. Smith declined to provide a direct answer to that question.

I then asked him about his rhetorical question:

What if one of the networks had taken a stand and refused to air the [video of an American hostage] on the grounds that it was aiding and abetting the enemy, and that from this point forward it would not be a tool of terrorist propaganda?

Mr. Smith testified he does not believe that the networks aid and abet terrorism by showing film of hostages. He insists that he was "raising the point that you never know where this video comes from and that . . . simply because it plays on al-Jazeera does not mean that it should necessarily play on any given network."

That is not being straight with the committee. That is not what his question clearly implied. There is only one implication from the question which he wrote, and that is that networks are aiding and abetting terrorism by airing this video. So if Mr. Smith does not believe this to be the case, it appears that Mr. Smith was willing to smear our television networks by implying

something that he does not actually believe.

On December 13, 2005, the committee met with Mr. Smith in executive session to afford him a further opportunity to explain his position. And while I cannot quote from Mr. Smith's statements in closed session, I believe it is fair to say that it was consistent with his testimony in open session.

Mr. President, the free press in this country is not our enemy. Freedom of the press is not only guaranteed in our Bill of Rights, it is a fundamental part of what we stand for as a country. Every one of us disagrees with stories and characterizations that appear in the press from time to time, but to label our networks as partners with those who attacked us on September 11 is over the top, it is extreme, it is unacceptable, and it is not the kind of position that is going to be useful for a representative of the DOD with our media.

The Assistant Secretary of Defense for Public Affairs is the primary Department of Defense official responsible for providing timely and accurate information to the press and to the public about the activities of the Department of Defense. A person who believes that the U.S. media is the enemy is not the right person for this position. A person who shows a willingness to try to intimidate the press, to try to limit or color its cover, is not the right person to serve in this position. That is why I urge my colleagues to oppose this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, it is my understanding that our distinguished colleague from Rhode Island will be addressing another matter.

Mr. LEVIN. No, this matter.

Mr. WARNER. Let me interject an observation or two, and then I will be happy to yield the floor.

Mr. President, the good Senator from Michigan and I have been partners on this committee now the 28th year and rarely do we have matters of—particularly with executive positions—difference because we screen them carefully. But on this one, we do. That is the way the system works.

I cannot impress upon my colleagues too strongly several points.

One, we did have an executive session, and I shall observe the confidentiality of that session, but I got quite a different impression when Senator LEVIN and I largely—I think Senator REED was present—cross-examined Mr. Smith very carefully. I felt he more or less acknowledged a better selection of words in hindsight he should have made.

In no way do I believe he was trying to smear the press. I think the best evidence I can produce for my colleagues that it wasn't sort of a smear is that, to the best of my knowledge—and I will put the question to all Members of the Senate, most particularly my distinguished ranking member—we did not

receive—at least I did not—any comments from the media industry, individual stations, or trade associations, or anything else. I think they took this in stride as a 30-year veteran of their profession with great distinction.

Everybody makes an error now and then. Who among us on this floor has not made a public statement that he or she wishes perhaps they had couched in different words?

To deny this man the position of the Assistant Secretary for Public Affairs, having been nominated by the President of the United States, having really been personally screened by the Secretary of Defense and others for the position—the Secretary of Defense, with whom I have discussed this matter, has total confidence in this individual. He has been performing in an acting capacity in the Department now for some period of time.

I urge my colleagues to look at the overall picture, but most importantly, is anybody going to stand up and say: Oh, no, this is what the media industry communicated with me, and for that reason I feel I should oppose the nomination? I don't think that evidence is before us.

That industry is tough, tough on itself, and it wants to maintain its reputation. The industry, as such, has accepted this as an event which happens to all of us who speak in public life.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. REED. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. REED. Mr. President, I stand to support the position of Senator LEVIN with respect to the nomination of Dorrance Smith to be Assistant Secretary of Defense for Public Affairs. I, too, participated in his hearings. I listened to Mr. Smith, and I think he lacks the judgment necessary to be the Assistant Secretary of Defense for Public Affairs.

Senator LEVIN has quoted the Wall Street Journal op-ed piece. This was not the example of making an offhand statement. This is not the situation where someone was being quizzed and extemporaneously suggested something that later one regrets. This was a very carefully crafted editorial which was sent to the Wall Street Journal for publication. In it, Mr. Smith says:

Osama bin Laden, Abu Musab al-Zarqawi, and al Qaeda have a partner in al-Jazeera and, by extension, most networks in the U.S.

Mr. President, can you think of a more provocative and a more incendiary comment, to suggest that anyone is equivalent, by extension, to bin Laden and al-Zarqawi? That is essentially what he said about the media in the United States. I believe it represents extremely poor judgment. Perhaps that is why he is getting the job, because we have heard before these very loose suggestions that somebody is just like Zarqawi, somebody is just like that.

We also heard coming out of the Department of Defense the notion that we have problems not because of strategic mistakes that have been made, we have problems because the media just doesn't get the story right. This may be part of their approach to the media, but I don't think it represents the judgment necessary for an individual to discharge the responsibilities of that nature for the United States and the Department of Defense.

The other point is that Mr. Smith later went on to say:

Al-Jazeera continues to broadcast because it reportedly receives \$100 million a year from the government of Qatar. Without this subsidy it would be off the air, off the Internet and out of business. So, does Qatar's funding of al-Jazeera constitute state sponsorship of terrorism?

As long as al-Jazeera continues to practice in cahoots with terrorists while we are at war, should the U.S. Government maintain normal relations with Qatar? . . . Should the U.S. not adopt a hard-line position about doing business with Qatar as long as al-Jazeera is doing business with terrorists?

All of these quotes are from the Wall Street Journal article.

I think what he fails to recognize is that Qatar is a major base of American military operations in the region. I asked at the hearing if he seriously thinks we ought to break diplomatic relations to Qatar. The answer was rather unsatisfactory, sort of: I was just posing a question. But these are the kinds of provocative questions that suggest he doesn't have the judgment to do the job.

Let me just suggest our involvement with Qatar. Qatar has invested over \$1 billion to build Al-Udeid Air Base, one of our principal air operations in the region. There are 2,200 U.S. air men and women stationed today at that airbase. During our operations in Afghanistan, that number was over 4,000.

U.S. military flights leave and arrive from Iraq every single day going into Qatar. All of us on the Armed Services Committee have traveled in Qatar, have stayed in Qatar, have visited with the Government of Qatar, and to suggest, even rhetorically, that we should consider abandoning our normal relations with Qatar is absurd.

This was not some cocktail-party comment where he was just thinking out loud; this was a very well-crafted editorial. Again, it just goes to my conclusion that he lacks judgment.

It is a very intricate arrangement we have with the Government of Qatar. Yes, they do support al-Jazeera. Al-Jazeera is not an entity that is trying to promote American interests in the region. That is clear. But we have to recognize not just the simple black-and-white comic book approaches to policy but the reality of our engagement with Qatar, their support of our operations, and the essential facilities that are there. Statements such as these are totally, in my mind, indefensible and demonstrate a gross lack of judgment. That is not the kind of individual we want in a position that is

supposedly designed to craft a policy that will, through ideas and engagement, get the people of this region to be supportive of the United States and its policies. So I join my colleague in opposing this nomination.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I know of no other Senator who is going to speak with regard to Mr. Smith.

Mr. LEVIN. Mr. President, I wonder if the Senator will yield? I don't know how much time I used on the previous comments.

The PRESIDING OFFICER. The Senator has 17 minutes remaining.

Mr. LEVIN. I yield myself 2 minutes more on Mr. Smith.

Mr. President, I have no better friend in the Senate, nor have I ever had a better friend in the Senate than JOHN WARNER. I know of no finer Senator and no finer gentleman. We have a disagreement on this nomination, and we respect each other's points of view.

As he has pointed out, we have been partners, and we are partners. And the use of the word by Mr. Smith, "partner," carries very special meaning. For him to say in writing, in a prepared op-ed piece, that Osama bin Laden and al-Qaida have a partner in al-Jazeera and, by extension, most networks in the United States—and he rattles them off: ABC, NBC, CBS, FOX, CNN, and MSNBC—is absolutely indefensible, it is extreme, it is over the top, and it is unbecoming somebody who is going to be representing the Department of Defense with the media.

If any one of us had said this on the Senate floor, that FOX News is a partner with the people who attacked us on 9/11, we would think that person not only owed FOX an apology but would probably owe every single victim of 9/11 an apology. I find this such an extreme statement. And the use of the term "partner" and his defense of that when we pressed him on it I find to be one of the most extreme, irresponsible, and reckless kinds of statements anyone can make. Again, I will defend Mr. SMITH's right to make it; that is not the issue here. He can write any article in the Wall Street Journal or any other paper and I will defend his right to do so. But the issue here is whether someone who has this position—this position—on the issue of whether tapes of al-Jazeera should be played on American television is, it seems to me, the wrong representative for our Department of Defense.

I want to thank my friend from Virginia. As always, he is putting differences in context. We have very few of them, and when we do have them, we deal with them with great respect for each other and our points of view, and I will always not only admire him for that, but always relish this particular relationship which we have had for so many years.

Mr. WARNER. Mr. President, I thank my long-time friend and good colleague for his thoughtful remarks, and I assure you, I offer the same long-term

feelings for you. But in this instance, I come back to the simple proposition that there is not a one of us who has not at times in our public career uttered or written statements that we wish we could have revised. I felt in executive session he was sufficiently contrite and acknowledged that he still has the basic concerns about al-Jazeera, and I share those concerns, but a better choice of words might have avoided it. Then all of the networks he enumerated, I didn't get any communications on it from any of them.

I suggest at this time, so that we can move and accommodate all of our colleagues—and I am very grateful to the majority leader and the Democratic leader for allowing these nominations to be acted upon today. For all Members, last night, I am pleased to say, we voice voted the Deputy Secretary of Defense Gordon England, so we made good progress in putting into position those persons who have been designated by the President for the Department of Defense.

NOMINATION OF PETER CYRIL WYCHE FLORY TO BE AN ASSISTANT SECRETARY OF DEFENSE

Mr. WARNER. We now turn to Peter C. W. Flory who became the principal Deputy Assistant Secretary of Defense for International Security Affairs in 2001. In this capacity he serves as the principal assistant to the Assistant Secretary of International Security Affairs who is the principal adviser to the Secretary of Defense on the formulation and coordination of international security strategy and policy for East Asia, South Asia, the Middle East, the Persian Gulf, Africa, and Latin America. I wish to put further facts regarding this distinguished gentleman into the RECORD, but I am very anxious to keep the momentum. I think the concern of my colleague can be best expressed by himself momentarily, perhaps not to Mr. Flory himself but to the matter of process, and that process is an issue that in some respects I share with my distinguished colleague. I yield the floor.

Mr. LEVIN. Mr. President, how many minutes remain?

The PRESIDING OFFICER. There is 14 minutes remaining.

Mr. LEVIN. Mr. President, I want to explain to my colleagues why the Senate should not proceed to the nomination of Peter Flory to be the Assistant Secretary of Defense for International Security Policy.

At its core, this is an issue of the executive branch refusing to provide the Senate with documents that are relevant to the confirmation proceeding.

This issue dates back to the summer of 2003 when I directed the minority staff of the Committee on Armed Services to conduct an inquiry into the flawed intelligence prior to the war in Iraq. As part of that inquiry, I wrote a

request to the Department of Defense in November of 2003 seeking documents relating to the activities of the Office of Under Secretary of Defense for Policy Douglas Feith concerning Iraq. Mr. Flory was a part of that office. It took 18 months of struggle to get as many documents as I could. I did not receive all the documents that were relevant to the inquiry and which are now relevant to the Flory nomination.

The Department of Defense has refused to produce key documents regarding the efforts of that office to develop and disseminate an alternative intelligence assessment which exaggerated the relationship between Iraq and al-Qaida. That assessment went directly to senior administration policymakers, bypassing the ordinary intelligence community procedure. These documents are critical to understanding exaggerated statements which were made by senior administration officials that al-Qaida and Iraq were allies, despite the conclusion of the intelligence community that there was no such link between the two.

Here is the critical connection between the Feith office and Mr. Flory: Mr. Flory worked in the office of Under Secretary Feith at the time the alternative assessment was developed and disseminated. Some of the internal e-mails we have been able to obtain indicate Mr. Flory requested and received briefings on the collection of intelligence from the Iraqi National Congress in December 2002. The INC material should have been evaluated by the intelligence community and filtered through their screen. Instead, it went to the Feith policy shop, which included Mr. Flory.

Mr. Flory was also a member of Mr. Feith's briefing team which came to the Senate in June of 2003 to explain to the Senate Committee on Armed Services staff the origins and work of the Office of Special Plans and the Policy Counterterrorism Evaluation group. Those were the two entities within Secretary Feith's office that were very much involved in characterizing the prewar intelligence.

In addition to the denial of relevant documents, the inspector general of the Department of Defense is currently conducting a review to determine whether Mr. Feith's office conducted unauthorized, unlawful, or inappropriate intelligence activities. We do not know what, if anything, that review may reveal about the role Mr. Flory may have played in such activities. What we do know is that his name appears in a number of relevant documents we have been able to obtain so far.

Before the Senate proceeds to his nomination, the Defense Department should provide the documents they have previously denied, or resolve the matter in a satisfactory manner, and the inspector general's office should be allowed to complete its investigation of the activities of Under Secretary Feith's office. That investigation may

shed additional light on Mr. Flory's activities. It may show absolutely nothing about Mr. Flory's activities, but we will have to await its conclusion to know.

This is not a case of blocking Mr. Flory from occupying the office to which he has been nominated. I want to emphasize this for our colleagues: Mr. Flory has received a recess appointment. He occupies the office. He is currently serving in the position to which he was nominated. So there should be no argument that we need to give up a vital institutional right to obtain documents relevant to our carrying out of our confirmation function. Again, Mr. Flory occupies the office to which he has been nominated. The issue here is whether we are going to have access to documents that are relevant or may be relevant to this nomination.

I want to provide a little bit of additional background and context for this issue to indicate the seriousness of these matters to this institution's obligations and responsibilities. In the period before the war, the intelligence community did not find a substantial link between Iraq and al-Qaida. The intelligence community stated that the relationship "appears to more closely resemble that of two independent actors trying to exploit each other," and that "al-Qaida, including bin Laden personally, and Saddam were leery of close cooperation." Nonetheless, senior administration officials alleged at times that Iraq and al-Qaida were "allies" and that there was a close connection and cooperative context between Iraqi officials and members of al-Qaida.

How could that happen? How could there be such a disconnect between what the intelligence community believed and what some of the senior administration officials were saying? For one thing, there is evidence that there was an alternative intelligence assessment, an alternative assessment that did not go through the intelligence community or the CIA; an alternative assessment that was prepared by Under Secretary Feith and his office, and that this was an important source for those administration statements. For example, the Vice President specifically stated that an article based on a leaked version of the Feith shop analysis was the "best source of information" on this issue. The Feith assessment was presented directly to senior administration officials by Secretary Feith, including White House officials, a very different assessment from that of the CIA.

This issue of the alleged Iraq-al-Qaida connection was central to the administration's efforts to make its case for war against Iraq. And according to public opinion polling, more than 60 percent of Americans believed there was a connection between Saddam and the horrific attacks of 9/11, although there has never been any evidence of such a connection. The Feith