

Armed Services be authorized to meet during the session of the Senate on Monday, September 23, 2002, at 2:30 p.m., in open session to continue to receive testimony on U.S. policy on Iraq.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR,  
AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Public Health, be authorized to meet for a hearing on "Hispanic Health: Problems with Coverage, Access, and Health Disparities" during the session of the Senate on Monday, September 23, 2002, at 2 p.m., in SD-430.

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

#### ORDERS FOR TUESDAY, SEPTEMBER 24, 2002

Mr. REID. Mr. President, in the morning it is my understanding that we are going to open at 9:30 and go to the 45 minutes and 15 minutes that Senators BYRD and LIEBERMAN have on the cloture. Is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. Mr. President, following consultation with Senators BYRD and LIEBERMAN, I ask unanimous consent that at 9:30, or as soon as the prayer and pledge are completed, Senator SARBANES be recognized for 5 minutes; that Senator DORGAN be recognized for 5 minutes; Senator WELLSTONE be recognized for 5 minutes; Senator CANTWELL for 5 minutes; Senator MURRAY for 5 minutes. Then, at approximately 9:55, Senator LIEBERMAN would be recognized for 5 minutes on his own time; Senator JEFFORDS would be recognized at approximately 10 a.m. for 5 minutes; Senator BOXER would be recognized for 5 minutes following that; then Senator STABENOW would be recognized for 5 minutes; following that, Senator BYRD would be recognized for whatever time is remaining; and that Senator LIEBERMAN would have 10 minutes remaining and he and Senator THOMPSON would close the debate.

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

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:25 a.m., Tuesday, September 24; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date; the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the Homeland Security Act under the previous order; further, that the live quorum with respect to the cloture motions filed earlier today be waived and that the Senators have until 1 p.m. to file first-degree amendments notwithstanding the recess of the Senate.

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

#### PROGRAM

Mr. REID. Mr. President, the next rollcall vote will occur at about 10:30 tomorrow morning on the Byrd amendment to the Homeland Security Act regarding orderly transition. Following this vote, there will be a period for morning business until 12:30 for tributes to Senator STROM THURMOND. The Senate will recess from 12:30 to 2 p.m. for the weekly party conferences. Then at 2 p.m., the Senate will resume consideration of the Homeland Security Act with 15 minutes of debate on the Lieberman-McCain amendment regarding a September 11 commission prior to a vote at approximately 2:15 p.m.

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

Mr. REID. I very much appreciate the courtesy of the Republican leader. He is going to be the final speaker today and rather than having me wait until he completes his statement, he was very courteous, as he always is, to allow me to do the wrap-up now.

#### ORDER FOR ADJOURNMENT

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the statement of the Republican leader.

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

#### SPECIAL COMMISSIONS

Mr. LOTT. Mr. President, let me begin tonight with a quote from Federalist Paper No. 37, January 11, 1789, by James Madison.

It is misfortune, inseparable from human affairs, that public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good.

James Madison believed then it would always be very hard to investigate events and do it in such a way, in moderation and without partisanship, that the public would be able to find out what really happened and then determine what should be done in the future to keep it from happening again—to advance the good or obstruct the bad.

Another quote goes from an anonymous source goes something along the lines of: If God had created a commission to establish Heaven and Earth, we wouldn't be here today.

Mr. President, my own experiences with commissions over 30 years in Congress have not been good. I view Congressional commissions as an abdication of responsibility. What are we for? Why do we have an Armed Services Committee, an Intelligence Committee, a Governmental Affairs Committee, or a Foreign Affairs Committee?

It seems to me that we in Congress should do the work of reviewing the

laws and overseeing the agencies and the various departments. Are they serving the public the right way? In a responsible way? Or is there an abdication of responsibility and duty by the various administrations in charge of running our government?

One of the reasons I have never supported BRAC, the various base closure commissions, is that when we create those commissions we are basically saying: We do not have the courage to do it; do not let us know what is going on; shove it off on a commission and let them do it.

But in the past closing excess bases had always been handled without a commission after every previous war. However, about 20 or 25 years ago Congress started to say: No, we cannot do that, we will not do it.

In the past after previous wars how was the military scaled down? Pentagon officials and other administration officials—after World War I, after World War II, after the Korean war—would send recommendations to the Congress regarding excess capacity and bases they felt were no longer needed. And unless Congress blocked it, the bases were closed. I bet every State in the Nation still has bases left over from World War II. In my own State, we had bases in Hattiesburg, in Greenville, MS, and Greenwood, MS. Some of the finest airport runways in our State are the very sturdy concrete runways that were built during World War II for air training facilities.

Congress simply acted and then the administration acted. Then powerful members of Congress started saying: No, you cannot close my base; close someone else's base. That is what ultimately led to the creation of commissions.

I have no doubt about the integrity and the good intentions of Senator LIEBERMAN and Senator MCCAIN with their proposal to create an independent commission to investigate September 11, 2001. How did that attacks happen, where were the failures, and how can we avoid repeating them. I know these two men. They are men of good faith that feel so strongly about our country they want this to be a positive thing. They envision some commission of grand pooh-bahs and gray eminences that will assemble and give us the benefit of their great wisdom, men and women who have been in the Government, been in the intelligence community, been in Congress, and thus could do the country a great service.

Mr. President, the track record of that happening is unfortunately very poor. As with all commissions, there are fundamental problems with this commission. Of course, we are now in the second iteration of how this commission would be set up and I presume there will be a third and a fourth. I presume the House will have yet a different version after they go through their iterations of a commission. And then the Administration has concerns that will have to be addressed as well.

Let me point out where a few of the problems with this particular commission are. Initially, the first draft of the Lieberman-McCain proposal would have had 14 Members, 5 appointed by the Democrat leaders in Congress, 5 by the Republican leaders in Congress and 4 by the President with the President naming the chairman.

Then someone figured out, wait a minute; that means there would be nine Republicans and five Democrats. That doesn't look bipartisan enough. So they said we cannot do that.

Now what is actually in the legislation as proposed is that five people would be appointed by the Democratic leadership and five by Republicans. Senator DASCHLE appoints three; I would appoint two; the Speaker would appoint three; and Congressman GEPHARDT, two—for a total of 10 members. However, there are no Presidentially appointed members, and no process for selecting a chairman. The bill just says there will be a chairman and a vice chairman of opposite parties. So, wonderful, how are the Chairman and Vice Chairmen going to be chosen. By Heaven?

If the commission were constituted that way they would be meeting 3 months just to pick their chairman. Which Member is going to break ranks and vote with the other five? I know the presumption is that these will be men and women of such eminence and prominence that they would meet, all 10 of them, and quickly decide on a chairman and a vice chairman and they would move along swiftly.

It "ain't" going to happen. I have had direct personal experience with a few commissions over the past 10 years, particularly when I was majority leader. I was involved in setting up a gaming commission to look at gaming in America, the effects of gaming, Internet and Indian gaming and the problems associated with gambling. I don't know how much money they spent for that commission. And good men and women were on that commission—men, women, minorities, and Native Americans representing all the various viewpoints. It was well constituted and the people who appointed the members did an exceptionally good job.

The commission members met, they acted seriously, they went all over the country, they thought about it, and they filed a report, and closed up their commission. I bet not one U.S. Senator ever read the report, ever. And I am embarrassed to say I read an outline and kind of glanced over it. I was not an advocate of the gaming commission, but I went along with it at the request of, among others, my great friend from Indiana, Dan Coats. Good work. Good intentions, Mr. President. Nothing came of it.

Even more recently, we had the Breaux Commission on Medicare. That was an interesting one, too. I think it was set up correctly number-wise, with good people: JAY ROCKEFELLER from the Finance Committee; Bob Kerrey, a

very innovative thinker on Medicare; Dr. BILL FRITZ was appointed on our side; Senator PHIL GRAMM, certainly one of the most knowledgeable Senators in this area who is also on the Finance Committee. Even former Finance Committee Chairman Pat Moynihan was on it.

We also had people from the real world on the commission. I know a woman on the commission who was over 70 with silver hair—I will not mention her name because I cannot connect it to her age. She dealt with Medicare on a daily basis. She benefited from Medicare. She knew what she was talking about. We had all these people who knew what Medicare was suppose to do for the nation's seniors, in theory. It was a great commission.

JOHN BREAUX was the chairman. I might note that it was interesting how JOHN got to be chairman. I remember specifically talking to President Clinton about somebody both sides could accept. We settled on JOHN and he took it and did a good job. The commission met and their meetings were on C-SPAN. They did a lot of thoughtful work, they had good debate, and they made excellent recommendations. They issued a commission report detailing their great recommendations.

What happened to their report Mr. President? Nothing. None of their recommendations have been implemented or acted on. And, by the way, they called for providing a prescription drug benefit. They had a plan to do it without bankrupting the entire Medicare system. It was the Breaux proposal and then the Breaux-Frist proposal. It was a tremendous effort. But nothing ever came of it.

So the track record on Commissions is not good. I don't want this to be a commission that is not set up right, that spends millions of dollars for nothing. I am told it is just \$3 million, but I bet it winds up being closer to \$12 million or more and that does not count the cost of the assistance that the other parts of the federal government are required to give it under the proposed bill. The commission will also stretch out over 18 months. When its report is ultimately filed, it will garner headlines and discussion on the weekend talk show for a week or two, but then it will be forgotten and not much will come of it.

Mr. President, I sincerely hope that if we do create the commission that I am wrong. But I don't think the prospects or the track record look very good.

Now, again, as I have said, the actual language of the amendment concerns me in many respects. For instance, it says that one of the purposes of the commission would be:

... to ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks.

However, there is no provision in this bill as to how the commission will have to deal with the evidence they are

given by the Department of Justice, U.S. Attorneys, Federal courts, and others in order to safeguard it. Would the public, and our enemies, be able to get this information through the Freedom Of Information Act or not? I suppose this issue can be addressed, but it is not clear in the bill as written and it needs to be.

Mr. President, the commission is also given almost total access to the nation's classified information, yet again there is nothing in the proposal that requires or directs the commission to safeguard it. The Senate and House Intelligence Committees have strict rules and elaborate procedures—as does the CIA, DOD, the National Security Agency and other entities entrusted with the nation's top secret information for protecting such information. Yet, there is there is no explicit requirement in this bill for this commission to protect our national secrets.

But again, that is why I like the joint House-Senate Intelligence Committee's efforts—it is equally divided among the parties, they have experience dealing with classified information, and they have settled procedures for handling such information.

Astoundingly, it appears that most of this new commission's proceedings would have to be public since they would be subject to the Federal Advisory Committee Act and that it materials available to the public under the Freedom of Information Act despite that fact that the Commission would be dealing with some of our most important and best kept secrets.

I also have concerns about the procedures for using and the extent of the subpoena authority granted the commission under this amendment. It appears that once elected, the Chairman, Vice Chairman, or even the Chairman of a Subcommittee created by the Commission, can issue any and all subpoenas he or she desires without having to go back to the rest of the Commission for permission, approval, or even a vote on the wisdom or propriety of their subpoena. We do not generally grant such unilateral subpoena authority to Chairman and Ranking members in Congress.

Mr. President, I have been opposed to this commission thus far. First, of course, as I have said, because I oppose commissions almost universally because I do not think they produce good results and because that is what we in Congress are for. But second—and one of the things I have been thinking about—is because we have already had the joint intelligence committee, House and Senate, looking into this matter. Those members have been working through these issues. They are still working on it. They have not yet completed their work. We have not received a final report. We are getting a few preliminary staff reports. Nevertheless, it seems we are going to go ahead and have this vote before we even get to see what the final results of Congress' own inquiry are.

By the way, I do wish the Joint Committee would do their work and tell Congress what we need to do to protect Americans from terrorism in the future. If we need to change even more about how our intelligence community operates, let's do it. I think we can do it in a bipartisan way.

Mr. President, I note that the amendment as proposed also states that the commission will:

... make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks . . . [and] investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

I wonder if the sponsors are aware that, since 1995, the Government has produced reams of materials regarding counter-terrorism, intelligence activities, and aviation security. Since 1995, seven commissions have dealt in this area and issued 10 separate reports prior to 9/11.

One of the past commissions was the so-called Gilmore Commission. Its official name was the "U.S. Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction." The Gilmore Commission submitted three reports to the President and Congress. The first one submitted in 1999 was titled "Assessing the Threat." The second submitted in 2000 was titled, "Toward a National Strategy for Combating Terrorism." The final report submitted just before the 9/11 attacks was titled "For Ray Downey."

The panel consisted of government officials and infrastructure specialists who examined domestic and international threats to the homeland, and made many recommendations for increased security and better coordination between federal and state agencies in combating terrorism.

Then there was the Hart-Rudman Commission led by two very respected Senators. Its official title was the "U.S. Commission on National Security in the 21st Century" and it ultimately issued reports and specific recommendations in 1999, 2000, 2001.

The reports were titled "New World Coming: Major Themes and Implications" (1999); "Seeking a National Strategy" (2000); and "Road Map for National Security: Imperative for Change" (2001). The commission, which was chartered by then Secretary of Defense William Cohen, had a broad mandate to study "the anticipated security environment in the early 21st Century." Its recommendations in three reports call for a counter-terrorism policy focus on deterrence and domestic preparedness capabilities. Most significantly, the Commission recommended establishing a Homeland Security Agency while noting the need for more human intelligence.

Then there was the "IC21: The Intelligence Community In The 21st Century" Report. This was done by the House Permanent Select Committee on Intelligence which published the report in 1996. The goal was to "define the type of intelligence community which would best meet the U.S. national security needs into the next century."

There was the so-called Bremer Commission created by Public Law 105-277 and officially titled the "U.S. National Commission on Terrorism and National Security in the 21st Century." The Bremer Commission released its report in 2000 and recommended a more aggressive domestic and foreign policy in combating terrorism.

Then there was the Aspin-Brown Commission, led by two more well respected gray eminences of the kind we are talking about—former Congressman Aspin and former Secretary of Defense Harold Brown. The Commission was created by Public Law 103-539 and charged with "Preparing for the 21st Century and Appraisal of U.S. Intelligence."

They made three findings in 1996: That the United States needed to better integrate intelligence into the policy community, needed for intelligence agencies to operate as a community, and needed to create greater efficiency and bring more rigor and modern management practices to the system. This was in 1996.

A really important commission was the "U.S. White House Commission On Aviation Safety and Security," which issued a report from its Chairman—Vice President Gore to President Clinton in 1997. It was a good report. It also had specific recommendations about how to improve aviation security. What happened to it? Nothing was acted on. Congress didn't act on it. Good work was done. This commission was tasked with developing "a strategy to improve aviation safety and security, both domestically and internationally."

Let's look at a few of the recommendations this report made in 1997—over four years before the 9/11 attacks took place. The very first paragraph in the report's 3rd Chapter—titled "Improving Security for Travelers"—said the following:

The Federal Bureau of Investigation, the Central Intelligence Agency, and other intelligence sources have been warning that the threat of terrorism is changing in two important ways. First, it is no longer just an overseas threat from foreign terrorists. People and places in the United States have joined the list of targets, and Americans have joined the ranks of terrorists. The bombings of the World Trade Center in New York and the Federal Building in Oklahoma City are clear examples of the shift, as is the conviction of Ramzi Yousef for attempting to bomb twelve American airliners out of the sky over the Pacific Ocean. The second change is that in addition to well-known, established terrorist groups, it is becoming more common to find terrorists working alone or in ad-hoc groups, some of whom are not afraid to die in carrying out their designs.

Mr. President, that one chapter went on to make 31 recommendations for improving aviation security. Some of those recommendations given over four years before 9/11 tragedy were as follows:

Recommendation 3.7—The FAA should work with airlines and airport consortia to ensure that all passengers are positively identified and subjected to security procedures before they board aircraft.

Recommendation 3.9—Assess the possible use of chemical and biological weapons as tools of terrorism.

Recommendation 3.10—The FAA should work with industry to develop a national program to increase the professionalism of the aviation security workforce, including screening personnel.

Recommendation 3.11—Access to airport controlled areas must be secured and the physical security of aircraft must be ensured.

Recommendation 3.14—Require criminal background checks and FBI fingerprints for all screeners, and all airport and airline employees with access to secure areas.

Recommendation 3.17—Establish an interagency task force to assess the potential use of surface-to-air missiles against commercial aircraft.

Recommendation 3.19—Complement technology with automated passenger profiling.

Recommendation 3.20—Certify screening companies and improve screener performance.

Recommendation 3.21—Aggressively test existing security systems.

Recommendation 3.23—Give properly cleared airline and airport security personnel access to the classified information they need to know.

Recommendation 3.24—Begin implementation of full bag-passenger match.

Recommendation 3.26—Improve passenger manifests.

Recommendation 3.27—Significantly increase the number of FBI agents assigned to counter-terrorism investigations, to improve intelligence and to crisis response.

Mr. President, all of this information is in the public record. It is there. Why don't we make use of it?

The list goes on. There were over 90 GAO reports before 9/11 and now there are over 50 GAO reports on Aviation and National Security and Terrorism since 9/11. There was a 1999 report titled "The FBI 30-year Retrospective Special Report on Counter-terrorism" that was put out by the FBI's Counter-Terrorism Division and which detailed 30 years of terrorism. It was done after terrorists were caught in 1999 trying to smuggle bomb-making materials into Jordan, and into the US from Canada in Washington State to disrupt celebrations of the Millennium.

That report gave the American public the following assurances in 1999:

In November 1999, the FBI restructured its National Security Division to create, for the first time, a division-level component dedicated specifically to combating terrorism.

In 1999 the FBI established the Counterterrorism and the Investigative Services divisions to further enhance the operational and analytic focus on the full range of activities in which violent extremists engage.

The FBI's 30-year retrospective report concluded with the following—as it turned out false—assurance in 1999:

While the threat is formidable, the U.S. intelligence and law enforcement community have developed an effective and highly integrated response to the [counter-terrorism threat] . . . Increasingly, the FBI's efforts involve the assistance and cooperation of other intelligence and law enforcement agencies. The threats of the new Millennium require such an integrated and aggressive response.

Mr. President, do you see my point? Good work has been done by good men and women, experts in this field, reports on what we need to do in order to do a better job—in 1996, 1997, 1998 and 1999 and 2000 and 2001. All this good work by the commissions, the GAO, the FBI, and others has not resulted in us doing anything about it.

Now we are going to have one more commission report. These are the commission reports on my desk that have been done already since 1995—a pretty good stack. It is very interesting reading.

The GAO report here, just on the top, “Combating Terrorism, FBI'S Use of Federal Funds for Counter-terrorism and Related Activities”—there is just simply a plethora of counter-terrorism reports available making thousands of recommendations. These reports did not look at the specific events that led up to 9/11 and what happened and what

we have learned from that, but they did look at what we should have been doing to prevent it.

I think, unfortunately, this commission amendment is probably going to be agreed to, but I wanted to raise my concerns about the way the commission amendment is drafted, the way the commission would be created, the cost that would be involved, and the likelihood that at the end of the day its findings will meet the fate of those from so many commissions before it.

As to money, I am sure they are starting off way low. They will be back asking for an increase in money within 3 to 6 months. I have already experienced that, too. In fact, one of the commissions I referred to earlier came back wanting more money, they wanted a little bit more, they came back yet a second time but I said: No. Wrap it up.

So I just do not think this is a wise thing to do. I think we ought to do it, or I think the administration ought to do it, but somebody needs to grab hold of this and do it the right way. Maybe the joint intelligence committee can still give us what we need in order to decide if we need more laws or if we need more reform within the intelligence community. But this commission is not going to bring us a lot more. It may get a few big headlines. It is going to cost a lot more money. Yet, I doubt if much will come out of it.

By the way, probably the earliest we will get anything out of it specifically would be 18 months from now. Goodness gracious, if we need to take action on what we have learned and what we know, are we going to wait for 18 months to see this commission report before we act? By the time this commission acts, I fervently hope that Congress will already have done everything that needs to be done as a result of the events of 9/11.

I thank the Chair for showing patience, and the staff here. I do not want to keep them too long. But I was afraid I would not get an opportunity to raise these questions tomorrow before we go to the vote. Maybe there will be a stampede to just get this done, but, boy, we are going to need to do a lot of work before we enact it into law.

I believe we are ready to complete our work for the day. I yield the floor.

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ADJOURNMENT UNTIL 9:25 A.M.  
TOMORROW

The PRESIDING OFFICER (Ms. CANTWELL). Under the previous order, the Senate stands adjourned until 9:25 tomorrow morning.

Thereupon, the Senate, at 7:07 p.m., adjourned until Tuesday, September 24, 2002, at 9:25 a.m.