

and personally advising the President. The Secretary of State has to manage all the bureaucracy contained in the State Department.

I guess what I would say to my colleagues, it is obvious to me the National Security Adviser cannot drop all of his or her responsibilities and spend his or her time negotiating problems in Iraq. The President is going to have to designate somebody to do that. He has chosen General Lute who is a man, by all accounts, of extraordinary ability, proven experience in the region, a person who knows the difficulties so he can carefully and with good judgment analyze the different disputes and try to get them settled so we can get on with producing more oil and gas, having water for the citizens, having the sewage system working, having the electricity on, and helping to make sure we have a legal system with sufficient bed spaces to detain criminals.

I discovered that we have one-ninth as many bed spaces in Iraq as we do in my State of Alabama. I saw a similar story for New York. There are not enough places to put the criminals, and we have to increase those places. The bureaucracy is sitting around and not getting that done.

If we catch and release terrorists, they are going to go out and kill again. There have been several articles that have picked up on this situation. I have to say, it has been a theme of mine for 3 years now, and we still haven't gotten the justice system up like we would like it.

I see the Presiding Officer, a former attorney general in his State, Senator SALAZAR. We were together in Iraq and talked about these issues. I know he shares a genuine concern that things are not being accomplished as fast as possible. So I think that operating in the name of the President to try and find out what difficulties are occurring in Iraq, where the bottlenecks are, and being able to get the parties together in the name of the President—he has no direct authority to order the Department of Justice or the Department of Defense to do anything. But he has the authority given by the President. If they can't agree, he can appeal to the President. He can say: Mr. President, the Department of State wants to do this, the Department of Justice wants to do this, the Department of Defense wants to do this. My recommendation is to do this, but you need to make this decision. Then the President can help eliminate these problems.

The truth is, when somebody such as General Lute says we have a disagreement between State and Justice and I am inclined to say this is the way it ought to be settled, but the President told me, when I call him tomorrow, to let me know if there are any difficulties, I am going to tell him that you two children cannot agree, usually they get together and settle it. They don't want to have the President come in and settle these disputes and get involved. They know he has a lot of issues on his plate.

That is the concept that I think can be helpful in making us more effective in creating the infrastructure, the civil justice system in Iraq and Afghanistan, thereby enhancing the ability of those governments in those countries to be successful, therefore enhancing their ability to be effective against terrorists and violence, therefore reducing the threat to our soldiers—that is the bottom line—and increasing their ability to be successful.

I am pleased to support this nomination. I think all the serious questions that have been raised have been answered.

I see my friend and colleague from Virginia. He raises a good point about this matter of a uniformed person being in the executive branch, the political branch, I guess one can call it. We have done it before and, in this case, in my view, that concern, while a legitimate one, I believe is outweighed by the fact that we need help right now and General Lute is the guy who can do it.

I yield the floor.

The PRESIDING OFFICER. Who yields time to the Senator from Virginia?

Mr. LEVIN. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 6½ minutes remaining.

Mr. LEVIN. Mr. President, I yield the 6½ minutes to the Senator from Virginia. If he needs additional time, I ask unanimous consent that he be given additional time, after the 6½ minutes. We will wait and see if that is the case.

Mr. WEBB. Mr. President, I will do my best to finish within 6 minutes. I appreciate the chairman asking me to come to the floor.

This issue came up fairly quickly because of the vote this morning. I was not able to be here when my friend and colleague, the senior Senator from Virginia, made his comments, but he did give me the letter that had been provided to him by the counsel to the President which addresses the issue of the constitutionality of a uniformed officer serving as a direct policy adviser inside the administration.

Counsel Fielding points out in the letter that there is no constitutional issue. He mentions Generals Scowcroft, Powell, Kerrick, and Admiral Poindexter as recent examples of active-duty military officers holding this type of position.

I would have risen in opposition to all of these other individuals under the circumstances that exist today, and I am going to try to clarify that.

I don't expect the opposition I have to General Lute's nomination is going to preclude him from being confirmed. I don't want the record to indicate that I have any question with respect to his competence, the way he has served the country over the past 30 years or so, but I do believe this is a very important issue, and it goes beyond the opinion that was in Counsel Fielding's letter.

He addresses the direct constitutionality because the military is a part of the executive branch. My difficulty is that the military must in this country remain separate from politics. That doesn't mean the President cannot bring an active-duty military person on to his staff. As Senator WARNER said in another meeting, the President has the authority to bring anyone of value to his administration he wants. The question becomes: Should that individual remain in uniform? And should that individual be able to return to the active-duty military once his service is done?

I asked General Lute during his confirmation hearings if he believed that the advice he would be giving in this position would be political in nature, and it unavoidably is.

So we have a situation that is recent history. This type of situation does not go back long in American history where we have brought active-duty military people inside the political circle of an administration and then allowed them to return as active-duty members back to the military. This has not happened with any frequency, other than in the past 20 years or so.

That individual returning to the military in a uniform unavoidably causes questions inside the military about political alignments and tends to politicize the military. That is my problem. There is no way General Lute can go to the morning meetings and give advice that is not simply operational, but that is political in nature with respect to how an administration puts a policy into place, and then can return to the active-duty military and be viewed as politically neutral. I say that again with respect to the other individuals who were named in Fred Fielding's letter.

It is my intention, during the time I am in the Senate, to ask any military officer who is being put into a position of political sensitivity whether that individual intends to take the uniform off and keep it off. Any individual who otherwise is qualified who intends to return to the active-duty military service, in my opinion, is violating this very sensitive line with respect to the politicization of the military, and I intend to oppose those nominations.

I thank the chairman for this time.

I yield the floor.

Mr. FEINGOLD. Mr. President, in keeping with my practice of deferring to Presidents when it comes to executive branch nominations, I voted to confirm LTG Douglas Lute to serve as Assistant to the President and Deputy National Security Adviser for Iraq and Afghanistan. He is a competent officer with a history of service to this Nation. However, I am deeply concerned that rather than changing course in Iraq, the President is merely rearranging the bureaucracy in the White House.

The administration needs to better coordinate the U.S. Government's operations in Iraq and Afghanistan. I am