Madam President, I thank my colleagues for this debate.

The bottom line here to me is simple. That is, I must disagree with my

good friend from Utah. I think transparency is to be preferred. Maybe

it should not be in all instances but that ought to be the presumption

and there ought to be strong argument before any transparency is not

done.

Why is transparency important? I will tell you why: Because it makes

better law. It makes better rules. The whole foundation of our

Government has been based on openness--open debate, open discussion.

When that happens, we end up with better laws. Time and time again

throughout the over 200-year history of this Republic, when things are

done in secret, it leads to trouble.

This is a very delicate issue. There is no question about it.

Obviously, we are in a new world, in a new situation. I don't think

absolutes always govern in these kinds of situations. That is for sure.

I am not sure exactly where the line is to be drawn. I don't think

anyone is. But I am certain of one thing and that is you will draw the

line a lot better when there is open debate and open discussion. After

all, we are talking about the place where liberty and security clash.

The beauty of our system of government is that it is able to handle

clashing values such as this in an extremely successful way, and has

been almost certainly or almost universally for all the years of the

Republic. Particularly the Founding Fathers, who debated these issues

over and over again, wanted transparency when they were debating. That

is why there is separation of powers. That is one of the reasons the

whole system was set up with a legislative body and an executive

branch. If, indeed, the Founding Fathers thought this all should be

done in the executive branch behind closed doors, we would have had a

totally different system.

Yet what we have found in this Justice Department all too often, in

this administration all too often, when the vital issues of liberty

versus security should be decided, there is an aversion to debate.

There is a preference for doing this in secret, in the dark, behind

closed doors. On issue after issue after issue, when that has been

done, a bad result occurred.

My colleague from Utah seems quite certain what happened at Abu

Ghraib and other places. He may be the only one in this Chamber who is.

I don't know how far the chain of command went. I don't know which

memos exist and don't exist and what they say and which were

dispositive. I have real doubts that it was the noncommissioned

officers at the bottom of the chain who were the only ones who had

anything to do with this, but who knows? Who knows? We are not going to

know anything until we get these memos.

If they have things that should be classified, let those be redacted.

If there are certain things that would damage the security of our

soldiers, of our country, let those be redacted.

But I doubt even my colleague from Utah, who stated that no one in

this Chamber feels we should not have transparency and debate--I think

we mistake two things. There are the difficulties and practicalities of

living in this real world, this post-9/11 world, and I have spoken

about that at the hearing and everywhere else. There is the leap

in logic, the incorrect logic, that says because those issues are

difficult they should be decided in the dark, in secret. The two don't

follow. In fact, I would argue the opposite follows. The more difficult

the issue, the more dangerous it is to either liberty or security or to

both, as in this case it may be, the more we need openness, the more we

need discussion.

Again, if this were the first time that this Justice Department had

decided to deal with terribly sensitive and difficult issues in secret

I don't think there would be such a brouhaha in this Chamber or in the

country. But it is a pattern that happens over and over and over again.

Our Attorney General has come to testify before our Judiciary Committee

twice since his ascension to that high office. When we ask questions,

we routinely get no answer, or answers that do not deal with the

questions. There is almost a mistrust of open debate, a mistrust of the

legislative body, a mistrust that the American people ultimately in

their wisdom will come to the right conclusion.

It is almost a sort of ``We know best we can't trust you to know

anything'' type attitude. I am surprised to see so many of my

colleagues defending that attitude.

Again, let's not mistake where we come down on the substance of this

issue, where there will be variation--my colleague from Illinois and my

colleague from Utah had different views--with the need for openness,

the need for transparency, the need for debate, and the faith that

certainly George Washington and Thomas Jefferson and James Madison and

Alexander Hamilton had, that we should have as well, and that is that

open debate will lead to the right conclusion. That is democracy. It is

faith in the people and ultimately their ability to make the right

decisions after open, fair debate, after both sides are presented.

That faith has been sadly lacking by the Attorney General and, I

regret to say, in good part by this administration. So we come tonight,

trying to force the issue. We believe we are living up to our

constitutional responsibilities. We believe that if the Founding

Fathers were looking down on this Chamber they would say: You are doing

the right thing to get these documents and make them public, to have an

open debate.

I hope and pray some of my colleagues on the other side of the aisle

will see this.

When Attorney General Ashcroft came before our committee and didn't

claim executive privilege and didn't claim what he was talking about

was classified, but said he would refuse to answer the committee

anyway, that is not what this Chamber is all about, or these hearings

are all about, or this Government is all about. That is why when that

has happened in the past, there have been discussions of contempt of

Congress. We wish to avoid those kinds of confrontations. We want to

come to an honest discussion.

Everyone will admit there were problems. My colleague from Utah said

that. Well, do you think those problems were sui generis? I would argue

those problems could well have resulted because of a tendency for

secrecy, or because of the aversion to open debate. For all we know,

there were contradictory memos floating around the Department of

Justice and floating around the Department of Defense. For all we know,

majors, captains, and colonels who had to interpret these things on the

ground were totally confused. We should find out all of this.

Again, to my colleagues, I hope we will agree to the Leahy amendment;

I hope we will agree to the Reid amendment to the Leahy amendment; we

will get to the bottom of this and come up with a policy in this

difficult world and difficult position that is satisfactory, or at

least the best solution where there may be no solution that satisfies

everybody.

I yield the floor.