Thank you, Mr. President.

I would like to comment on some of the things that have been said.

First of all, I believe there are things our country has every right

to maintain secrecy on. I think the administration has been open about

producing memorandum to us in a way that I don't know they are required

to do. I was a Federal attorney in the Department of Justice and a U.S.

attorney for 12 years. I have some appreciation for the way the

Government works. The President has a right to receive legal advice on

all the options he may have from his Attorney General or staff

attorneys. In fact, a lot of reference has been made here, and as far

as I can tell, Attorney General Ashcroft's memoranda are memoranda

written only by lower level attorneys, detailing the legal options

available in a time of war.

Certainly we want to encourage attorneys to consider these ideas and

these issues on what is appropriate in terms of interrogating prisoners

who are bent upon the destruction of the United States of America and

as many of its citizens in this country as they can possibly kill. That

is fact, and we know it. The rules of law and of war are a joke to the

terrorists that we have captured and others still bent on attacking

Americans. They care nothing about it. They make television movies of

beheading people. That is what they think of the rules of law.

So what we need to do is decide what is appropriate and what laws we

are bound by, and we ought to set a good policy there.

I would say this: The Senator from New York is a good lawyer. He has

said in his own view that torture sometimes may be necessary. That is

what Senator Schumer said.

I think any Attorney General should properly advise any President of

the United States in time of war on absolutely what the limits of his

powers are. Those are things that maybe ought not be bandied around the

world. It is hypothetical. You don't know what the precise

circumstances are.

But the question that started all of this is abuses in prison in

Iraq. The memos at the center of this debate have absolutely no

connection--there is no connection--between what went on in Iraq and

these memos, because our soldiers were operating under established

policies of the military and internal discussions between the President

and various lawyers, or memoranda they may have received from various

lawyers.

I want to say this about Attorney General Ashcroft. I was at the

Judiciary Committee hearing when he testified. I saw him subjected to

unfair abuse by former colleagues on that committee which was

embarrassing to the committee. I don't think I have ever seen in my

experience in this Congress the kind of disingenuous and unfair

treatment of a former Member of this body. It was not right. The

ranking member was using the whole time to make a litany of distortions

and charges against the Attorney General where he had no opportunity to

answer them. He knew there was no way he could. It was not right. It

was wrong. I said that then, and I say it now. He had no opportunity to

respond to the ranking Member. Senator Leahy knew it, and said these

things one right after another: You did this, you did that. They

continued in that vein.

The question here was, Oh, he wouldn't define torture, yet he had a

memorandum defining torture.

That is not what Attorney General Ashcroft said. Go back and read the

transcript. I saw what he said. Attorney General Ashcroft is a smart

man, an honest man, and he answered the question directly. He said,

Senator, the Congress defined torture. It is not for me to define

torture. You define torture. The Attorney General doesn't define

torture. I am not defining torture. The Congress has already defined

it.

There is a statute. I have a copy of it here in which we defined it

under certain circumstances. We set out an anti-torture statute. That

is what the Attorney General was referring to.

Then somebody with great demand said, We want these memos; you are

going to give them right now. Are you giving them or not? The Attorney

General sat there in a nice, direct, soft way, and said, No, Senator, I

am not giving you these right now. Are you claiming executive

privilege? He said, No, I am not claiming executive privilege.

These are memorandum submitted to the President of the United States.

It is the memorandum of his client. It is the President's memorandum.

It is not his to give. He can't go around giving out the confidential

information he sent to the President of the United States about what he

can do during the conduct of a war. That is not right. He didn't do it.

And he didn't back down on it. One of the Senators said, Well, this is

important because I have a son in uniform. The Attorney General said,

My son has been in Iraq. He just got home, and he is going back to

Iraq. He is in uniform, too. I care about this issue.

I don't think what has been said is fair.

With regard to the amendment that is pending, I reject it. We need to

vote it down. It is political. It is designed to embarrass this

administration politically, and it hurts us around the world. We are

asked to cast a vote suggesting that this administration has not

conducted itself in a proper way. The evidence does not show that.

I am on the Armed Services Committee as well as the Judiciary

Committee. We have had, I think, four hearings in Armed Services. We

brought back the top general. We had the Secretary of Defense,

Secretary Rumsfeld. We had Secretary Wolfowitz, the Deputy Secretary.

We had General Abizaid and General Sanchez. We had General Taguba who

went over there and conducted the investigation and issued the report

on it.

I heard all of that evidence. None of them said, Well, we got a

memorandum from the Attorney General that the President of the United

States signed off and said we are supposed to torture prisoners, we are

supposed to carry them around, move them around and put hoods over

their heads, and otherwise abuse them.

There is no evidence that was so. In fact, the military had a pretty

good series of policies about how to treat prisoners. Some said, some

of them went too far. If some of them went too far, let's hear exactly

what they say went too far and what was wrong. If we need to change

that policy, I am willing to discuss that. In fact, we are discussing

that at this very moment.

A number of the things that were so objectionable, none of the things

that happened in that prison, were in any way remotely connected to the

memorandums and directives and regulations issued by General Sanchez

and the commanders in Iraq. In fact, all the memorandum said they

should follow Geneva Conventions in how they handle prisoners.

Some say we did not train them about the Geneva Conventions. Every

American soldier is trained about the Geneva Conventions. I was in the

Army Reserve for 10 years. I was a lawyer and U.S. attorney for some of

that time, and for a short period of time I was a JAG officer. I taught

a course on the Geneva Conventions. You had to sign a document saying

you briefed your soldiers every year on the Geneva Conventions.

Everyone knows you cannot torture prisoners, you cannot display them

in sexual ways. Everyone knows that. Every private is taught that.

Everyone up to the generals is taught that. It is

not the way we are supposed to treat people. Certainly it was not

justified and not the policy of the military. It never was the policy

of the military. I don't appreciate the suggestion that this was the

policy of the military and that somehow the internal memorandums up in

the Department of Justice in Washington about hypotheticals and what

powers the President might have somehow were carried out in the

prisons. They had established policies.

I saw in the Washington Times today, quoting one of these memos, a

memo entitled ``Humane Treatment.'' That ought to make some people

around here happy. It actually says ``Humane Treatment of Al-qaida and

Taliban Detainees.'' That is a pretty good title for a memorandum. They

are complaining about some military memorandum they did not like the

title of, saying the title suggested something bad and within the

memorandum there were commands to preserve and protect the prisoners.

This title is a good title. President Bush says he accepts ``the

legal conclusion of the Attorney General and the Department of Justice

that I have the authority under the Constitution to suspend Geneva as

between the United States and Afghanistan, but I decline to exercise

that authority.'' Of course, our values as a Nation call for us to

treat detainees humanely, including those who are not legally entitled

to such treatment.

Now, what is all this about? Senator Hatch mentioned, as I believe

Senator Cornyn did, and several years ago in the Judiciary Committee we

had a number of hearings right after September 11 on what the authority

of the United States is with regard to treatment of prisoners and the

application of the Geneva Conventions. The Geneva Conventions do not

apply to unlawful combatants. It is that simple.

What is an unlawful combatant? It is a person who does not wear a

uniform, who enters a country surreptitiously, who attacks civilians,

and does not comply with the rules of war. Our enemies are supposed to

comply with the rules of war also. Unlawful combatants do not comply

with the rules of war. Al-Qaida does not. Most of the people in

Afghanistan were not complying with the rules of war and the people who

are bombing and killing in Iraq right now are not complying with the

rules of war. All of them are unlawful combatants.

One of the reasons for the Geneva Conventions is to give protections

to prisoners of war who were lawful combatants, to encourage people to

be lawful combatants and not to be unlawful combatants, not to be

terrorists who sneak around and bomb people.

Has this ever been dealt with in America? Are we making this up? Is

this some idea the Senator from Alabama thinks is an idea that has

never been dealt with before? No. In the Judiciary Committee we had a

hearing on it and discussed these issues in some detail not long after

September 11. We had testimony and read and debated the Ex parte Quirin

case. In Ex parte Quirin, the Nazis sent saboteurs into the United

States to bomb and kill and dismantle our civilian structure. That was

their plan. They were Nazi saboteurs. They were not wearing German

uniforms. They were not acting in a way consistent with the regular

Army. Their plan of attack was terrorist in nature. They were

apprehended.

The President of the United States, certainly a greatly respected

President for our Democratic colleagues who are pushing this

legislation, President Franklin Roosevelt, was highly offended. He said

we are not going to give them a trial in Federal court. We are not

going to try them with a jury in the United States of America. These

people are setting about to destroy our country, to kill our people,

and to sabotage our civil infrastructure. They are going to be tried,

as I have the power to do so, by a military commission. He so ordered

it.

They were tried in the U.S. Department of Justice right down the

street by a military commission. They did not have public trials. After

completely trying the case and building a record and making findings of

guilt, most of them were executed within weeks of their arrest. The

validity of these trials were challenged and the case went to the

Supreme Court of the United States. The Supreme Court affirmed the

views of the President. Some of these enemy combatants were given

probation and some of them who were tried that way were American

citizens.

Crimes were committed in the United States by American citizens, but

they were participating as unlawful combatants. They were tried by a

military tribunal. They were convicted. Most of them were executed.

Some of them got lesser times and one or two who cooperated got out of

jail before too long. But all served a considerable amount of time and

the Supreme Court said that was appropriate. That was right.

The history of the military commission is strong. That is justice.

Military commissions do justice. Military officers are people. They do

not want to convict innocent people, send innocent people to jail, or

do things that are wrong. They are empowered in combat to use deadly

weapons on a whole host of people that could kill them.

President Truman, who followed President Roosevelt, dropped an atom

bomb on two cities in Japan. The President of the United States does

have powers in wartime that are different from that kind of situation

when somebody robs a bank down the street.

Fundamentally, what we are dealing with is how to deal with prisoners

under these circumstances. Some people say, a lot of people in this

country say, they don't respect us, they don't respect law, they bomb

innocent civilians, women, men, children. They cut off people's heads

and make a video of it and brag about it. But they are not entitled to

any rights. They are not entitled to any rights. We just ought to go at

them and kill them, the sooner the better.

We have some in this body who say these terrorists are entitled to

more rights than the laws themselves give. In fact, they have insisted

on it. This resolution actually calls on the Government to give these

terrorists and unlawful combatants more rights than they are entitled

to under the law.

President Bush has said: I am going to comply with the Geneva

Conventions. We are going to treat these people humanely. That is the

right position, I believe, and that is what he has done. We have given

them fair treatment.

I visited Guantanamo and saw how it was done down there early on. I

believe they were treated very well. The reports that come out of there

continue to show that.

We know we had a terrible problem in Abu Ghraib prison where, on a

midnight shift, a group of soldiers were out of control. Now we have a

desperate attempt by Members of this Senate to go around and say the

abuses that occurred on that night were somehow the responsibility of

the Secretary of Defense, General Sanchez, General Abizaid, President

Bush, and John Ashcroft.

That is not true. It is wrong. It undermines our ability to lead in

the world. It does, I believe, place greater risk on our soldiers who,

at this moment, are on the battlefield in Iraq because we sent them

there. We should not do that.

If you have legitimate complaints, let's have them, let's hear them

in the Senate. But I do not believe we need to be suggesting there is a

policy of this Government to mistreat people as was done in Abu Ghraib

prison in Iraq.

We had a distinguished senior Senator who said we had traded Saddam

Hussein's prisons for American prisons. What he meant by that was we

were treating prisoners just as Saddam Hussein did. That is wrong. It

is a slander on the soldiers of the United States. It should not have

been said. When that was said, it got headlines in the terrorist camps

all over the world. It should not have been said. It is false.

Not long ago I had the opportunity to meet seven Iraqi individuals

who had had their hands chopped off in Saddam Hussein's prisons, with

Saddam Hussein justice. We know of the thousands he had killed there--

without trial, without any benefit of being able to put on a defense,

and how he used, as a policy of his government, terror.

These kinds of dictators use random violence to terrorize a

population to keep power. He did it systematically. This was one of the

most brutal dictators in the history of the world. He killed hundreds

of thousands of people. There are maybe 300,000 graves in that country

of people who were killed.

So it is wrong to say that. Why we keep pushing this, I do not know.

I will

just say this: The Armed Services Committee--we have this bill on the

floor right now, and it has taken us too long, and it has caused us to

not be able to have the hearings we probably would have had--but we are

going to have more hearings on what happened in Abu Ghraib prison.

Already people are being tried and convicted and sentenced for

misbehavior there. We are going to keep on, and the higher up it goes,

they are going to be followed.

I was a former prosecutor for some time, and I will ask anybody in

this body to tell me: If a soldier is charged with committing an abuse

on a prisoner, and he was ordered to do so, or there was some written

document he was relying on to do this abuse, do you think he is not

going to produce it? Do you think he is not going to say that in his

defense? Certainly, he will. So if there are any higher-ups involved in

this, it is going to come out.

But, frankly, I do not see the evidence that any higher-ups in the

higher echelons of the Government ever issued any orders in any way

that would have justified this. It did not happen at any time except on

a midnight shift by a few people, who videoed themselves, videoed

themselves in circumstances that would be very embarrassing to their

mamas and daddies if they had seen it, I can tell you that, on their

own behavior, much less what they were doing to the prisoners.

So I do not think it was a pattern. I do not think it was a policy.

In fact, all the evidence we have seen so far shows it was not. Within

2 days of this information coming forward to the commanders in that

region, General Sanchez ordered an investigation. He suspended people.

The military announced publicly, in a public briefing in Iraq, that

they were conducting an investigation of abuses at Abu Ghraib prison.

They have continued those investigations. A number of people have

been charged criminally by the military. A number of them have had

their cases end with punishments being imposed, and others will have

them as time goes by. I would say, what more can you ask them to do?

They are cracking down. I do not appreciate resolutions such as this

that suggest it was a policy of the United States that this occurred,

that suggest that our American soldiers are the same as Saddam

Hussein's soldiers and prison guards--the way they treated their

prisoners. It is not right. It is wrong. It should not be said, and it

undermines the confidence that we ask the world and the Iraqis to have

in our soldiers.

We believe they are going to do good work. We believe they are doing

good work. We know, when you have 100,000, 200,000 soldiers over there,

some of them will make mistakes. Just like any city in America that has

200,000 citizens, 130,000 citizens, some of them are going to commit

crimes and make errors and do things wrong. They ought to be

disciplined. They ought to be held accountable. But we do not need to

fire the mayor because somebody commits a crime on the streets of the

city.

Mr. President, I see the Senator from Arizona is in the Chamber, and

I know he may well have comments to make on this or other issues.

I will conclude by saying this is not a good resolution. It has no

business here. It is contrary to what we ought to be doing.

We ought to be spending our time on how to help our military get a

handle on this problem in Abu Ghraib, and we ought to be spending our

time mostly on trying to help them be effective in dealing with,

capturing, and killing the terrorists who reject all rules of law, who

reject all Geneva Conventions, who believe they have a legitimate right

to advance their personal power agenda by killing innocent people

whenever and wherever they can.

I am most grateful that we have American soldiers this very moment

following the vote of this Congress and executing the policy we ask

them to execute in Iraq to further freedom and liberty around the

world.

I yield the floor.