



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, SECOND SESSION

Vol. 150

WASHINGTON, FRIDAY, MAY 14, 2004

No. 68

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 17, 2004, at 12:30 p.m.

Senate

FRIDAY, MAY 14, 2004

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN CORNYN, a Senator from the State of Texas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Gracious and sovereign God who has carried us from the day of our birth, thank You for Your willingness to use us for Your unfolding plan. You are the blessed controller of all things. Thank You also for Your gracious intentions to bless us, to give us a future and a hope. Help us to remember that in everything You are working for the good of those who love You and are called according to Your purposes.

Guide our Senators today in each decision that they may be faithful to their calling to be guardians of freedom. Make even their disadvantages become but a backdrop for the movement of Your loving designs. Give each of us faith to look beyond the trials of the present and to know that neither life nor death can separate us from Your love. We pray this in Your awesome Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN CORNYN led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 14, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN CORNYN, a Senator from the State of Texas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. CORNYN thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire.

SCHEDULE

Mr. SUNUNU. Mr. President, I ask unanimous consent to claim leadership time on behalf of the leadership for the following announcement.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

dered. The Senator from New Hampshire.

Mr. SUNUNU. Today we will be in session for a period for morning business. We do not expect a lengthy session today. As the majority leader announced last night, no rollcall votes will occur today. This morning we are working on a couple of agreements, including a consent for the consideration of the bioshield bill. We hope to consider that bill on Monday, with a vote on passage of the bill occurring on Tuesday. Also, as a reminder to my colleagues, the next rollcall vote will occur on Monday afternoon.

Under the order from last night, we will begin the Department of Defense authorization bill on Monday at 2:30. Chairman WARNER is working with Senator LEVIN to consider amendments during Monday's session, and we expect to have an amendment scheduled for a vote Monday afternoon at approximately 5:30.

Next week, all Senators can anticipate a busy week as we continue consideration of defense authorization, the bioshield bill, the medals legislation, a number of nominations, and other items that can be cleared. Senators should adjust their schedules accordingly to prepare for full sessions throughout the week.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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S5487

The Senator from Hawaii.

THE UNINSURED

Mr. AKAKA. Mr. President, I rise today to address a growing problem in my home State of Hawaii and the Nation, individuals that do not have health insurance. The total number of uninsured people in the United States reached 43.6 million in 2002. Since 2000, the total number of uninsured has increased by 3.8 million. In the State of Hawaii, it is estimated that there are approximately 120,000 people who do not have health insurance.

The uninsured delay seeking medical treatment, which is likely to lead to more significant and more costly problems later on than if they had sought earlier, preventative treatment or proper disease management. Health insurance is essential to making sure that individuals can access health care services and properly manage their chronic diseases, such as diabetes. A tremendous amount of needless pain and suffering can be eliminated by ensuring that health insurance is universally available.

Everyone should have access to affordable health insurance. We must expand Medicaid and the State Children's Health Insurance Program, SCHIP, to provide essential access to health care for more people. In addition, we must take steps to help rein in health care costs in an attempt to keep coverage affordable. Providing additional resources for disease management programs and primary health care services will lead to long-term savings and benefits. Also, meaningful prescription drug patent law reforms need to be made to ensure that generic drugs can be brought to market in a timely manner.

We are also obligated to help provide support to health care providers that provide uncompensated care for the uninsured. In Hawaii, it is estimated that hospitals lost \$95 million for uncompensated care in 2002. However, while other states benefit from Medicaid disproportionate share hospital, DSH, payments designed to provide additional support to hospitals that treat large numbers of Medicaid and uninsured patients, Hawaii is left out of this important program.

The Balanced Budget Act of 1997, BBA, created specific DSH allotments for each state based on each of their actual DSH expenditures for fiscal year 1995. In 1994, the State of Hawaii implemented the QUEST demonstration program that was designed to reduce the number of uninsured and improve access to health care. The prior Medicaid DSH program was incorporated into QUEST. As a result of the demonstration program, Hawaii did not have DSH expenditures in 1995 and was not provided a DSH allotment.

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 made further changes to the DSH program, which included the es-

tablishment of a floor for DSH allotments. However, States without allotments were again left out. Other States that have obtained waivers similar to Hawaii's have retained their DSH allotments. Only two States, Hawaii and Tennessee, do not have DSH allotments. I was disappointed that language similar to an amendment that I had offered, which was accepted as part of the manager's package for the Senate's prescription drug bill was not included in the conference report for H.R. 1, the Medicare Prescription Drug and Modernization Act of 2003. The language that was finally included prevents Hawaii from obtaining its DSH allotment as long as the QUEST program remains in place.

Medicaid DSH funding is needed because our hospitals in Hawaii are struggling to meet the elevated demands placed upon them by the increasing number of uninsured people. DSH payments will help Hawaii hospitals meet the rising health care needs of our communities and reinforce our health care safety net. All 50 States need to have access to Medicaid DSH support.

While Hawaii continues to be denied this assistance, many States fail to fully utilize their DSH allotments. For fiscal year 1999, more than \$1.2 billion was returned to the Treasury because States failed to draw down their full Medicaid DSH allotments. More than \$800 million was returned to the Treasury for fiscal year 2000. It is unfair that while certain States are declining to use their full allocation, States with no or small allotments are being denied the use of these resources. A viable option to provide relief for Hawaii and other low-DSH States is to redistribute funding that other States have returned to the Treasury. It is not fair that States that either lack any DSH funding or have low-DSH allotments cannot have an opportunity to apply for these excess funds to help bolster their public health safety net.

I appreciate all of the work done by my colleague from New Mexico, Senator BINGAMAN, to help provide relief to low-DSH States. I look forward to continuing to work with my colleagues to help restore Medicaid DSH payments to Hawaii. Also, we must continue our efforts to improve access to health care so that everyone can obtain affordable, comprehensive, and quality health care coverage.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, this week our country observes National Police Week, a time to honor the men

and women who put their lives on the line every day to bring peace—and peace of mind—to America's cities, towns, and neighborhoods.

Tomorrow, Police Week culminates in Peace Officers Memorial Day, when we pay special honor to those officers who gave their lives in the line of duty.

This memorial has a long history. In 1789, a U.S. Marshal named Robert Forsyth was shot and killed in the line of duty.

Since then, over 14,000 law enforcement officers have given their lives to protect the liberties upon which America was founded.

Police officers have always served as the first line of protection for our communities. But 3 years ago, on September 11, our Nation gained a new appreciation both for the dangers they face and for the courage they routinely exhibit.

We owe our police officers a debt of gratitude that is immeasurable and unending.

Every year we honor those that lost their lives in the line of duty and carve their names into the Police Memorial so that future generations will know who they are, and that they lived, and died, as heroes.

This year, one of South Dakota's heroes will be honored and remembered.

Deputy Bill Davis joined the Moody County Sheriff's Office in 1982, where he served as deputy sheriff for 21 years.

Like so many of our officers, Deputy Davis's service to his community was bigger than his badge.

Bill Davis was a veteran of the U.S. Navy and the National Guard.

He embodied the values of community service and civic duty throughout his life. Last November, while investigating a car accident, Deputy Davis was struck by a car and killed.

As we commemorate the heroism of Deputy Bill Davis, and all those who lost their lives in the line of duty, we cannot help but acknowledge the risks undertaken each and every day by America's police officers.

Our police officers do not ask for reward or recognition, merely the tools they need to do their job. And in return for all they have given us, we have an obligation to ensure they have every available resource necessary to keep our neighborhoods safe.

Over the past year, I have spent a lot of time meeting with South Dakota's police officers, asking about the specific challenges they face, and what we can do here in the Senate to support them.

The most pressing issue for our Nation's law enforcement is the added responsibility and burden of being first responders in the event of terrorist attack. The complexity of this new role requires training and tools that no small local police department could be expected to have on its own.

That is why I am pleased that South Dakota recently received \$15 million in grants from the Department of Homeland Security to pay for new

counterterrorism training and technologies.

In addition, dozens of our local police and sheriffs' departments received Federal grants last year for first responder training and equipment, such as bullet-proof vests.

I was pleased that because of the great work being done in my State, we were able to ensure that the South Dakota Police Chiefs and Sheriffs Associations received \$1.5 million in Federal funding in 2003, and an additional \$250,000 in 2004.

Rural communities, such as those in South Dakota, have a number of unique law enforcement challenges, as well.

People in rural areas face the same problems of gangs and drugs as their urban counterparts, but with fewer officers and across broader geographic areas. Methamphetamine production and use, for example, is a growing concern for South Dakota's communities and families. Because the ingredients and the equipment used to produce methamphetamines are so inexpensive and readily available, the drug can be produced in homes.

Over the past several years, methamphetamine labs have proliferated throughout South Dakota, and law enforcement has struggled to keep up with its troubling growth.

To help law enforcement combat the spread of methamphetamine and other challenges, I have introduced the Rural Safety Act, which would authorize grants to establish methamphetamine prevention and treatment pilot programs in rural areas, and provide additional financial support to local law enforcement.

In addition, I have recently joined with Senator JOHNSON in cosponsoring the Federal Emergency Meth Lab Cleanup Funding Act of 2004, which helps our local law enforcement and communities with the contamination left behind by meth labs.

For all the work we are doing to support our police, this weeks reminds us that we are asking them to do more with less.

Unfortunately, under the administration's Fiscal Year 2004 budget, funding for several important programs related to State and local law enforcement are drastically reduced. Of particular concern is the administration's cut to the COPS program.

Since 1994, South Dakota has received \$43.7 million from the COPS program for much-needed training, equipment, and new police officers, including officers for the Spearfish, Custer, Huron, and Tripp police and sheriff departments.

In the finest tradition of community policing, these officers are out in our neighborhoods, working with schools, churches, and businesses to find new ways to make our streets safer.

Over the past 10 years, COPS is responsible for putting more than 100,000 new police officers on the streets throughout our country and was piv-

otal in the historic reductions in crime we saw during the 1990s.

But despite its ongoing success, the COPS budget has been targeted for cuts by this administration every year—in fact, last year the administration proposed eliminating COPS altogether.

For FY 2005, the administration has proposed a staggering 86 percent cut for the COPS program—from \$703 million to only \$44 million.

More than ever, we depend upon our police officers' ability to protect our communities from combating terrorism, to protecting our citizens from the dangers of drug abuse, to helping young people stay clear of trouble.

State, local, and tribal law enforcement officers are contributing on a daily basis to the effort to make our Nation safer and more secure. We have a responsibility to provide them the support they need.

This week, we honor officers, such as Deputy Bill Davis who have made the ultimate sacrifice for our communities and for our safety.

The debt we owe them can never be repaid.

But this week, and every week, we have an obligation to commit ourselves to ensuring that the priorities of America's police men and women are at the very top of our agenda.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I ask unanimous consent to speak for as much time as I may consume.

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

SAME-SEX MARRIAGE

Mr. CORNYN. Mr. President, on May 17th, this Monday, the State of Massachusetts will begin to issue marriage licenses to same-gender couples so they may marry. This rather surprising development, particularly for those who have not been following the events in Massachusetts over the last few months, is not the result of the vote of the people of Massachusetts. Once a court decision—which I will speak more about in a moment—was handed down, which compelled State officials and local officials to issue these licenses to same-gender couples, there was an attempt made to amend the Massachusetts Constitution. The first step in a three-step process has been accomplished and if that constitutional amendment is ultimately passed in 2006, it will ban same-sex couples from marrying.

But because of the structure of the constitutional amendment process in

Massachusetts, the court order takes effect Monday, May 17th. Essentially the people of Massachusetts are left out of governing themselves. They have been subjected to a court edict and their views considered irrelevant.

When we held the first of three Judiciary subcommittee hearings on this issue last September, that was before the Massachusetts Supreme Court had made this ruling. It was a 4-3 decision, holding that the Massachusetts Constitution barred any restriction on marriage license issuance to exclusively one man and one woman.

The issue that we raised last September was, Is the Federal Defense of Marriage Act in jeopardy? We had witnesses on both sides, some of whom concluded yes, it was, and some who concluded no, it probably was not. I suggest the passage of time has proved the accuracy of the prediction of those who said yes, it is in jeopardy—that their views seem to be correct, while those who say no, it is not, appear to be wrong.

Because the Massachusetts Supreme Court is the only state supreme court in the Nation that has ruled marriage licenses must be issued to same-sex couples, there are many people, many well-intentioned people who say this is a local issue, and others—perhaps not being as informed as they might be about constitutional law—say this is surely only going to be confined to one State. They say that this is an issue that ought to be handled on a State-by-State basis and requires no action by the Federal Government or by our elected officials in Congress.

I submit the evidence is becoming increasingly clear this is not a local phenomenon, nor is this a matter that can be addressed on a State-by-State basis. This is a national issue that requires a national response.

As we all recall, shortly after the decision in Massachusetts, the mayor and other officials in the city of San Francisco began issuing marriage licenses to same-sex couples in that city—not just people who lived in that city but people who traveled to that State from other States. The New York Times has reported in at least 46 cases out of those several thousand illegal marriages, that took place in defiance of California State law—there is the potential now for lawsuits in 46 states filed by those individuals who were married in San Francisco who then moved back to their State of residence. In all but four states, the seeds are there for lawsuits to be filed by couples demanding that the court compel their State to recognize the validity of same-sex marriage.

In addition, there are lawsuits that are pending now in Nebraska, in Utah, and most recently in Florida, asking the court to hold as a matter of Federal constitutional law that restrictions on marriage only as between a man and a woman violate the Federal Constitution.

It is important to look back at what the first signal was that traditional

marriage was in jeopardy when it came to the courts. It goes back to a decision made by the U.S. Supreme Court in a case called *Lawrence v. Texas*. This was a case that struck down the anti-sodomy provisions of Texas law. The most remarkable thing about that decision is not the result, it was how the Court got to that result. Indeed, as many predicted, the Court overruled the decision in *Bowers v. Hardwick*, which upheld the anti-sodomy law of Georgia years ago. But in this case, the Court not only struck it down on an equal protection basis—Justice Kennedy, writing for the Court, created a new constitutional right: To be free in one's intimate sexual and personal relationships, such that he held the Constitution now prohibited any sort of restriction by legislation or by official policy on those intimate relationships between adults.

Indeed it was predicted at that time, I believe it was Justice Scalia in dissent, who said this was the first step toward a ban on traditional marriage. *Lawrence v. Texas* was a Federal constitutional decision that was one of the bases upon which the Massachusetts Supreme Court interpreted its State constitution to require same-sex marriage in that State, a rather ominous succession of events. It is an ominous situation for those of us who support traditional marriage and believe it is important to our society and to our children.

Now, there are those who want to say this debate that has ensued over same-sex marriage is designed to be hurtful or harmful to those who might take advantage of the opportunity to marry same-sex couples. I want to make clear that is not true. I believe that Americans instinctively believe in two fundamental propositions: First, we believe in the essential worth and dignity of every human being. Yet at the same time, we also believe in the importance of traditional marriage.

It is no accident that it was not until 224 years after the Massachusetts Constitution was written and ratified, in 1780, that an activist supreme court mandated same-sex marriage in Massachusetts, contrary to the wishes and the will of the people of that State. As I say, now this is not just a local issue, nor a State issue; indeed, this is a Federal issue, requiring a Federal national response.

So in all sincerity, I reiterate that those of us who argue in favor of a remedy to ensure the protection of traditional marriage do not do that with an intent to disparage anyone personally. But we do believe that traditional marriage is a positive good for our society, as the most stabilizing and positive influence on family life in this country, as well as being in the best interests of children.

The fundamental question we are going to have to address, sooner or later, is who will define marriage in the United States? Will it be the American people, or will it be activist judges

who are reading a newly found right into a Constitution that for the last 200 or more years has not included that right, or at least it was a right that went undiscovered by activist judges prior to this time? Put another way, the question is, are the deeply held convictions of the American people when it comes to the importance of traditional marriage irrelevant?

I suggest to you the answer is no—unless, of course, we are giving up, after all this time, on what Lincoln called “government of the people, by the people, and for the people.”

So the question is, what do we do? What do the overwhelming majority of the people in the United States of America do, those who believe in the fundamental importance of traditional marriage for the stability of families and for the best interests of our children? What are we to do to respond?

Well, the majority of States have responded but I would suggest to you in a way that does not protect them anymore when it comes to the definition of traditional marriage. And that is, a majority of the States, back in the middle of the 1990s, passed what are called defense of marriage acts, which defined marriage as exclusively an institution between one man and one woman.

Congress itself, as a matter of Federal policy, passed the Federal Defense of Marriage Act in 1996. Overwhelming bipartisan majorities in the House and the Senate voted to pass the Defense of Marriage Act. But it is that very statute, that very law, that very expression of the national will that has now been challenged most recently in a Florida Federal district court, claiming that the Federal Defense of Marriage Act violates the U.S. Constitution as interpreted by the U.S. Supreme Court in *Lawrence v. Texas*.

The only response I know of, to judges who are basically making the law up as they go along, or trying to write their own personal or social agenda into the Constitution and to deny the American people the fundamental right of self-government, is a constitutional amendment. I know—and we all know—the American people have been historically reluctant to amend our Constitution. In fact, it has only happened 27 times in our history. But it is important to recognize, at the same time, that there is written into that very same Constitution a mechanism, under article V, which allows two-thirds of the U.S. Congress to vote on an amendment, which is then ratified by three-quarters of the States. This allows the American people to retain their fundamental right to determine what kind of nation America is and what kind of nation it will become, even against a judiciary run amok.

There are those I respect a great deal in this body and elsewhere who would suggest that the Constitution is sacrosanct. Indeed, we put our hand on the Bible and we pledged to uphold the Constitution and laws of the United

States when we were sworn into this body. But I submit that we take an oath to the whole Constitution, not just part of it, including article V, which provides a procedure for amendment so that the Constitution can continue to reflect the will of the American people.

I suggest to you that the Constitution is not a holy covenant to be interpreted or amended by nine high priests on the U.S. Supreme Court. These judges do not have the exclusive rights to the Constitution. We, the American people, do. And sometimes—and this may very well be one of those times—it may be necessary for the American people to reclaim their right to determine what kind of nation we are and what kind of nation we will become, particularly when it comes to an issue as fundamental as traditional marriage. If, out of ignorance or apathy, we sacrifice our right to self-government, we have allowed the very nature of our Nation to be altered, and that would be very tragic indeed.

So I say in conclusion: this is a very serious matter. It ought to be discussed rationally and seriously in a dignified and civil manner, with enmity toward none, but with a desire on the part of the American people, who believe in the importance of traditional marriage and its benefit to our society—we ought not to be afraid to stand up and say so. Nor should we be deterred by those who might be less civil, be less dignified and less temperate in their remarks. Indeed, we know that can occur.

But it is my hope that as we go forward, and particularly as we mark this watershed event in America's history on Monday, May 17, with the issuance of marriage licenses to same-sex couples in Massachusetts by virtue of court edict and not a vote of the people. This is a matter that will not go away, and ultimately the American people will insist that we deal with it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first, I commend the Senator from Texas for a fine statement. I note that his coming to the Senate and joining the Judiciary Committee has been a tremendous asset for that committee. His leadership of the subcommittee which he chairs and the serious and complete way in which he addresses issues has really helped us to tackle some of these very difficult issues. I appreciate his leadership very much.

Mr. President, I ask unanimous consent to speak for 20 minutes in morning business.

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

PRISONER ABUSE IN IRAQ

Mr. KYL. Mr. President, I want to talk about the prisoner abuse in Iraq and how it ties into the conduct of our war there to ensure that we can prevail

in this struggle in which we have engaged. I want to begin by talking about a New York Times newspaper article this morning which I think puts into better perspective the nature of the offense that has been committed in that prison and then move to a discussion of how our troops are trained to conduct investigations at a military installation in Arizona, my State, and conclude with remarks that were offered this morning in an op-ed piece by Charles Krauthammer that I think puts all of this into a perspective that we would do well to pay some attention to.

Let's begin with the last 10 or 12 days of discussion about what occurred in the prison in Iraq and how that has affected public opinion about the morality of our effort there. There has been a lot of speculation. I have urged colleagues and others to avoid speculating until the reports are in, until the facts are before us, because speculation cannot only lead to wrong conclusions, it can actually damage our position around the world.

Some seem all too anxious to prove that what happened there had to be the result of orders from higher-ups, that it just couldn't possibly have been the actions of a few soldiers acting in a very wrong way; it had to come from higher-ups.

It is possible there were some orders from higher-ups that had an effect, but sometimes there seems to be almost a desire, a hope that we will find it was the orders from somebody higher up, and the political implications of that are obvious.

I have seen speculation that because families and friends of some of these soldiers, understandably, were in disbelief that their friend or child could have done this without being ordered to do so, that, therefore, is proof the order had to come from above.

It is not proof. The defense is understandable. It may or may not be true. But what is becoming a little bit more clear is that, despite the number of photographs, these incidents appear to have been isolated, to have occurred on few occasions in one place by a very few people without having been ordered from above.

This is the point of a New York Times article of today, "U.S. Soldier Paints Scene of Eager Mayhem" at Iraqi prison. It is the story of the statement given to investigators by SPC Jeremy C. Sivits who is under court-martial. The statement was released by a lawyer for another soldier. That is how the New York Times acquired it.

The sense of the story is that Specialist Sivits described a scene of misconduct by a few of his colleagues:

... not authorized by anyone in the chain of command and with no connection to any interrogations.

Of course, we have seen a lot of speculation that it must have been ordered, it must have been in connection with softening up the prisoners. The first

clear word of what happened by someone who was willing to talk to investigators and admit his own culpability in the process suggests that is not true. Let me continue to quote:

The soldiers knew that what they had done was wrong. Specialist Sivits told investigators, at least enough to instruct him not to tell anyone what he had seen. Specialist Sivits was asked if the abuse would have happened if someone in the chain of command was present. "Hell no," he replied, adding: "Because our command would have slammed us. They believe in doing the right thing. If they saw what was going on, there would be hell to pay."

The story goes on to note that this activity occurred at least in his presence apparently only on two occasions, most of it on one particular evening, and that at one point a sergeant heard the commotion and looked down to see what was going on and yelled at them in anger to knock it off. The story obviously concludes that this is, according to this specialist, a case of bad behavior by a few people who obviously had inadequate supervision but who were not doing this to soften up prisoners or doing it at the command of anyone. And, indeed, they knew if their commanders found out there would be "hell to pay."

This is important because if it is true, what it demonstrates is that what we have been saying all along is right. America does not conduct its interrogations this way. It does not contain and handle prisoners this way. This conduct was an aberration. It will not be tolerated. The guilty will be forced to pay, and we will try to understand what is necessary to implement to see that it doesn't happen again.

Secondly, if in fact this is correct, as the New York Times has reported, it is not just these people who will pay but their immediate superiors who allowed them to conduct this activity. Because even though those superiors may not have known about it or certainly participated in it, they created the circumstance under which this could occur. They bear some responsibility as well.

What about the interrogation techniques? There has been a lot of speculation about that. First, the official U.S. Government policy, the official Defense Department policy, is that the laws of the Geneva Conventions will apply in Iraq, period. There is no exception for really bad guys. There is no exception in order to extract information. Some confusion exists because of the fact that the Geneva Conventions don't apply to a group such as al-Qaida. That is a fact. It is not something subjective.

The reason is because by the very terms of the Geneva Conventions, they apply in cases where countries have signed the conventions, and they apply to situations in which you have an army, a military force that wears uniforms, that does not conduct activities against civilians. In the case of the al-Qaida, none of those conditions applies. Technically the laws of the Geneva

Conventions do not apply to al-Qaida. That is a true statement. Because people have made that point, there has been then a leap to the conclusion that, therefore, the U.S. Government is mistreating al-Qaida. But that is not true.

Our policy is that notwithstanding the fact the Geneva Conventions don't apply to al-Qaida detainees, the humane treatment called for in the Geneva Conventions will still be the rule, the law, the order of the day for our handling of those prisoners so that the same kind of treatment that is required by the Geneva Conventions will even be applied to people who are not technically entitled to the protection. That is our official U.S. policy.

It is trained at Fort Huachuca, an Army base in southern Arizona, which has a mission, among other things, to train interrogation and collection of intelligence.

Let me read a couple of items from an article from the Tucson Citizen of May 13.

I ask unanimous consent to print in the RECORD a May 14 article from the New York Times, a May 13 article from the Tucson Citizen, and an article to which I will refer, an op-ed piece by Charles Krauthammer, dated May 14, from the Washington Post.

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

[From The New York Times, May 14, 2004]

U.S. SOLDIER PAINTS A SCENE OF EAGER MAYHEM AT IRAQI PRISON

(By Kate Zernike)

When a fresh crop of detainees arrived at Abu Ghraib prison one night in late October, their jailers set upon them.

The soldiers pulled seven Iraqi detainees from their cells, "tossed them in the middle of the floor" and then one soldier ran across the room and lunged into the pile of detainees, according to sworn statements given to investigators by one of the soldiers now charged with abuse. He did it again, jumping into the group like it was a pile of autumn leaves, and another soldier called for others to join in. The detainees were ordered to strip and masturbate, their heads covered with plastic sandbags. One soldier stomped on their fingers and toes.

"Graner put the detainee's head into a cradle position with Graner's arm, and Graner punched the detainee with a lot of force, in the temple," Specialist Jeremy C. Sivits said in his statements to investigators, referring to another soldier charged, Specialist Charles A. Graner Jr. "Graner punched the detainee with a closed fist so hard in the temple that it knocked the detainee unconscious."

"He was joking, laughing," Specialist Sivits said. "Like he was enjoying it."

"He went over to the pile of detainees that were still clothed and he put his knees on them and had his picture taken," Specialist Sivits said. "I took this photo."

Specialist Sivits's two statements, given to investigators in January and released by a lawyer for another soldier on Thursday, recount the evening's activities in graphic but unemotional language, portraying a night of gratuitous and random violence. Lawyers for the soldiers have explained the abuse captured in hundreds of photographs now at the center of the Abu Ghraib scandal by saying

the soldiers were operating on the orders of military intelligence in an effort to get detainees to talk.

Last night, lawyers for the other charged soldiers repeated that. They said that in a bid for leniency, Specialist Sivits, 24, the first to be court-martialed, is expected to plead guilty on Wednesday and testify against the others.

But Specialist Sivits described a scene of twisted joviality not authorized by anyone in the chain of command and with no connection to any interrogations.

"She was laughing at the different stuff they were having the detainees do," Specialist Sivits said, describing Pfc. Lynndie R. England, another soldier charged.

The soldiers knew that what they had done was wrong, Specialist Sivits told investigators, at least enough to instruct him not to tell anyone what he had seen. Specialist Sivits was asked if the abuse would have happened if someone in the chain of command was present. "Hell no," he replied, adding: "Because our command would have slammed us. They believe in doing the right thing. If they saw what was going on, there would be hell to pay."

The evening began with Staff Sgt. Ivan L. Frederick II casually telling Specialist Sivits to join him where the detainees were held. They escorted the detainees from their holding cells and piled them up. "Graner told Specialist Wisdom to come in and 'get him some.' Meaning to come in and be part of whatever was going to happen."

Specialist Sivits told investigators, referring to Specialist Matthew Wisdom.

"A couple of the detainees kind of made an ahh sound as if this hurt them or caused them some type of pain when Davis would land on them," he said. Sergeant Javal C. Davis responded by stepping on their fingers or toes, Specialist Sivits said, and the detainees screamed.

The platoon sergeant standing on a tier above the room heard the screams and yelled down at Sergeant Davis to stop, surprising the other soldiers with the anger in his command, Specialist Sivits said. But within two minutes, the platoon sergeant left, and the soldiers resumed the abuse.

"Next Graner and Frederick had the detainees strip," Specialist Sivits said. "Graner was the one who told them to strip in Arabic language." The detainees hesitated. Specialist Graner and Sergeant Frederick took them aside and instructed them again. Specialist Graner told them to sit.

"I do not know what provoked Graner," Specialist Sivits said, "but Graner knelt down to one of the detainees that was nude and had the sandbag over his head" and punched the detainee unconscious.

"I walked over to see if the detainee was still alive," Specialist Sivits said. "I could tell the detainee was unconscious, because his eyes were closed and he was not moving, but I could see his chest rise and fall, so I knew he was still alive."

Specialist Graner said little. He had wounded his hand. "Damn, that hurt," Specialist Sivits quoted him as saying. After about two minutes, Specialist Sivits said, the detainee moved, "like he was coming to." Specialist Graner walked over to pose with the pile of detainees.

Sergeant Frederick was standing in front of another detainee. "For no reason, Frederick punched the detainee in the chest," Specialist Sivits said. "The detainee took a real deep breath and kind of squatted down. The detainee said he could not breathe. They called for a medic to come down, to try and get the detainee to breathe right. Frederick said he thought he put the detainee in cardiac arrest."

Specialist Graner, meanwhile, was having the other detainees make a tower, all of

them in a kneeling position like a formation of cheerleaders.

"Frederick and Graner then tried to get several of the inmates to masturbate themselves," Specialist Sivits recounted.

"Staff Sergeant Frederick would take the hand of the detainee and put it on the detainee's penis, and make the detainee's hand go back and forth, as if masturbating. He did this to about three of the detainees before one of them did it right."

After five minutes, they told him to stop. Specialist Graner then had them pose against the wall, and made one kneel in front of the other, Specialist Sivits said. "So that from behind the detainee that was kneeling, it would look like the detainee kneeling had the penis of the detainee standing in his mouth, but he did not."

Specialist Sabrina Harman and Private England "would stand in front of the detainees and England and Harman would put their thumbs up and have the pictures taken."

Asked why the event took place, Specialist Sivits replied: "I do not know. I do not know if someone had a bad day or not. It was a normal day for me, aside from the stuff I told you about."

Asked to describe Sergeant Frederick's attitude, he replied, "Same as ever, mellow." Specialist Harman, he said, looked somewhat disgusted, but laughed, too, and so did Specialist Sivits, in his own account.

"What part did you think then was funny?" investigators asked. He replied, "the tower thing."

The evening was not an isolated case of violence, Specialist Sivits said. He described another night when a dog was set upon a detainee, and another when a detainee was handcuffed to a bed.

"Graner was in the room with him," he said. "This detainee had wounds on his legs from where he had been shot with the buckshot." Specialist Graner, he said, would "strike the detainee with a half baseball swing, and hit the wounds of the detainee. There is no doubt that this hurt the detainee because he would scream he got hit. The detainee would beg Graner to stop by saying 'Mister, Mister, please stop,' or words to that effect."

"I think at one time Graner said in a baby type voice, 'Ah, does that hurt?'" Specialist Sivits added.

Guy L. Womack, a lawyer for Specialist Graner, said he had not seen the statement from Specialist Sivits but doubted that his client would have hit a detainee.

"I don't think he was that kind of guy," Mr. Womack said. "He would have done it if he was ordered to do it." He said that military intelligence soldiers were in one of the graphic photographs, indicating that they were aware of what was going on.

"Sivits, as you know, has entered a plea agreement with the government, getting lenient treatment for testifying against other people," Mr. Womack said, "and by definition if he doesn't say something negative about other people he would not get his deal."

Similarly, a lawyer for Sergeant Frederick dismissed the statement. "Sivits is a roll-over guilty plea, and that may provide comfort to some," said the lawyer, Gary Myers. "But it has no impact upon the defense of any other case because it has nothing whatsoever to do with the guilt or innocence of my client."

Specialist Sivits's lawyer has not responded to requests for comments.

As for Specialist Sivits, investigators asked him in his statements whether he thought any of the incidents were wrong. "All of them were," he replied.

Why did he not report the incidents? He replied: "I was asked not to, and I try to be

friends with everyone. I see now where trying to be friends with everyone can cost you."

"I was in the wrong when the above incidents happened," he said. "I should have said something."

[From the Tucson Citizen, Thursday, May 13, 2004]

ABUSE DISGUSTS FORT'S INTERROGATORS
TRAINEES TAUGHT RIGHT WAY TO MAKE SUBJECTS TALK; STUDENTS LEARN HOW TO PLAY ON FEARS WITHOUT VIOLENCE

(By C.T. Revere)

The abuse of Iraqi detainees at Abu Ghraib prison violated all training standards for Army interrogators and has commanders and students at Fort Huachuca angry and fearful of potential repercussions.

"It's anathema. It's not what we train. It's not our values," said Maj. Gen. James Marks, commanding general of the U.S. Army Intelligence Center. "I can't fathom who would do that . . . I'm disgusted by it. Those aren't interrogation techniques. That's a bunch of rogue soldiers conducting evil acts."

Many at Fort Huachuca, home of the 111th Military Intelligence Brigade, which includes the training programs for interrogators and counterintelligence agents, say the actions of a few soldiers at Abu Ghraib have cast a pall on the Army's intelligence-gathering community.

"Here we are, training hard and preparing ourselves, when something like that happens," said Pfc. Ryan Johnson, 30, who will complete Human Intelligence Collector training in less than two weeks. "It's a few individuals who have taken it upon themselves to act outside of what they've been trained to do. It reflects on the rest of us that are training to do the right thing. I was disgusted with the way they conducted themselves."

In response to the abuse, officials at Fort Huachuca opened their classrooms and training grounds to news media yesterday to show how the ever-growing population of interrogators is trained.

"We do not authorize any form of hands-on in terms of our use of interrogation techniques," Marks said. "We try to play on their existing fears, but it is not allowed to put hands on during an interrogation. The only time you put hands on is when you are physically moving them from one place to another."

Methods such as sleep deprivation, forcing detainees to stand in one position for prolonged periods and physical assaults of any kind are not part of the curriculum at Fort Huachuca, Marks said.

"We train soldiers to do what's right. Our Army is values-based," he said.

Soldiers training to become interrogators complete an intensive course that runs for 16 weeks and four days and teaches 14 methods for interrogating "in accordance with the Geneva Conventions," said Joel Krasnosky, a retired Army interrogator who is the chief of the Human Intelligence Collector Course.

The first approach is to ask direct questions intended to glean the information being sought, he said.

If that fails, interrogators can offer incentives for information, appeal to emotions such as love of country or hate for groups or ideas, intensifying or reducing fear, appealing to pride or ego or convincing the person under interrogation that there is simply no point to resisting.

Another approach calls for giving the impression that the interrogators knows more than he or she does, sometimes by using a "prop" dossier or file. Another tactic is to insist the source has been identified as someone else they'd rather not be.

Repeating the same question over and over can break down a source, as can constantly interrupting the person or simply sitting silently and waiting them out.

Once any of the approaches gets a source talking, interrogators go back to direct questioning to get the information they want, said Master Sgt. Steven Bohn, senior enlisted instructor and a veteran interrogator.

"Ninety-nine percent of the time that is the most effective approach," Bohn said. "You've got to get that information. You beat around the bush all day long. That's what we do. But then you've always got to go back to the direct approach."

All interrogations take place with a security guard present, typically a member of the military police, Marks said. Oftentimes, a contract interpreter is also present, but he or she never participates in the questioning, he said.

"They are a device through which an interrogator can get to the person he is interrogating. We're not necessarily as good as the guy we're trying to interrogate. We admit that," he said.

Adherence to the military doctrine known as "The Law of War" prevents soldiers from crossing the line even in trying circumstances, Marks said.

"The training has got to step in so that the soldier doesn't even put his finger on the line," he said. "It's not just physical courage. It's moral courage."

Better examples of military training are the two noncommissioned officers, both trained at Fort Huachuca, who developed the intelligence that led to the capture of Saddam Hussein, Marks said.

While physical abuse and deprivation are not part of the training for interrogators, they must take measures to obtain information that is intended to save lives, he said.

"I want them to be tired. I want them to be afraid of me," he said. "When they breathe, I want them to think the interrogator gave them the right to expand their lungs. When the interrogator enters that room, I want him to think, 'Oh, my God. What's going to happen next?' And I haven't touched him."

[From the Washington Post, May 14, 2004]

THE ABU GHRAIB PANIC

(By Charles Krauthammer)

Democrats calling for Donald Rumsfeld's resignation invoke the principle of ministerial responsibility: a Cabinet secretary must take ultimate responsibility for what happens on his watch. Interesting idea. Where was it in 1993 when the attorney general of the United States ordered the attack on the Branch Davidian compound in Waco, which ended in the deaths of 76 people?

Janet Reno went to Capitol Hill and said, "It was my decision, and I take responsibility." This was met with approving swoons and applause. Was she made to resign? No. And remember: This was over an action that did not just happen on her watch but that she ordered—an action that resulted in the deaths of, among others, more than 20 children.

Given the fact that when they were in power Democrats had little use for the notion of ministerial responsibility, their sudden discovery of it over Abu Ghraib suggests that this has little to do with principle.

This is, of course, about politics. And for the administration, the politics are simple: Cabinet members are there to serve the president, and if they become a political liability, they should fall on their sword for the greater good of the administration.

If that were the case here, I am sure that Rumsfeld, who does not need this or any job,

would resign. He should not. Throwing Rumsfeld to the baying hounds would only increase their appetite.

Remember that when the scandal broke, there was lots of murmuring among the chattering classes about the inadequacy of the president's initial response because, for all his remorseful groveling on al-Hurra and al-Arabiya, he had not invoked the magic phrase: I'm sorry. So what happened when, shortly after, in the presence of King Abdullah of Jordan, he explicitly apologized? "They've Apologized. Now What?" (headline, New York Times, the very next Sunday.)

In the Rumsfeld case, the "Now What?" is obvious. Democrats will pocket the resignation, call it an admission of not just ministerial responsibility but material responsibility at the highest levels of the administration, and use that to further attack the president.

In any case, the whole Rumsfeld debate is a sideshow. For partisans it is a convenient way to get at the president. And for those who have no partisan agenda but are shocked by the Abu Ghraib pictures, it is a way to try to do something, anything, to deal with the moral panic that has set in about the whole Iraq enterprise.

This panic is everywhere and now includes many who have been longtime supporters of the war. The panic is unseemly. The pictures are shocking and the practices appalling. But how do the actions of a few depraved soldier among 135,000 negate the moral purpose of the entire enterprise—which has not only liberated 25 million people from 25 years of genocidal dictatorship but has included a nationwide reconstruction punctuated by hundreds, thousands, of individual acts of beneficence and kindness by American soldiers?

We are obsessing about the wrong question. It is not: Is our purpose in Iraq morally sound? Of course it is. The question today, as from the beginning, remains: Is that purpose achievable?

Doability does not hinge on the pictures from Abu Ghraib. It hinges on what happens on the ground with the insurgencies. The greater general uprising that last month's panic-mongers had predicted has not occurred. The Sadr insurgency appears to be waning. Senior Shiite clerics, local leaders and demonstrators in the streets of Najaf have told Moqtada Sadr to get out of town. Meanwhile, his militia is being systematically taken down by the U.S. military.

As for Fallujah, we have decided that trying to fully eradicate Sunni resistance is too costly in U.S. lives. Moreover, this ultimately is not our job but one for the 85 percent of Iraqis who are not Sunni Arabs—the Shiites and Kurds who will inherit the new Iraq. We have thus chosen an interim arrangement of local self-rule in the Sunni hotbeds. And if that gets us through the transition of power to moderate Iraqis, fine.

This seems entirely lost on the many politicians and commentators who have simply lost their bearings in the Abu Ghraib panic. The prize in Iraq is not praise for America from the Arab street nor goodwill from al-Jazeera. We did not have these before Abu Ghraib. We will not have these after Abu Ghraib. The prize is a decent, representative, democratizing Iraq that abandons the pan-Arab fantasies and cruelties of Saddam Hussein's regime.

That remains doable. What will make it undoable is the panic at home.

Mr. KYL. The Tucson Citizen's article in part reads as follows:

The abuse of Iraqi detainees at Abu Ghraib prison violated all training standards for Army interrogators and has commanders and students at Fort Huachuca angry and fearful of potential repercussions. "It's anathema.

It's not what we train. It's not our values," said Maj. Gen. James Marks, commanding general of the U.S. Army Intelligence Center. "I can't fathom who would do that * * * I'm disgusted by it. Those aren't interrogation techniques. That's a bunch of rogue soldiers conducting evil acts."

Just a couple other sentences from the article:

Many at Fort Huachuca, home of the 111th Military Intelligence Brigade which includes the training programs for interrogators and counterintelligence agents, say the actions of a few soldiers at Abu Ghraib have cast a pall on the Army's intelligence-gathering community.

It goes on to note that "it reflects on the rest of us that are training to do the right thing." And just one other quotation from General Marks:

We do not authorize any form of hands-on in terms of use of our interrogation techniques.

The article goes on to talk about precisely what kind of interrogation is permitted, what the techniques are to get information. But it makes it very clear none of the things that have been depicted in these photographs are even remotely authorized.

So it actually ties in with the article from the New York Times that this could not have been done by military intelligence to gather information from these prisoners. That is an important point because some have begun to question the morality of our involvement in Iraq and the mission which so many of our young soldiers have put their lives on the line to achieve, and now several hundred have died to achieve.

One of our colleagues made the point this prison had done horrible things under the regime of Saddam Hussein, and now it was open under new management, namely the U.S. Government.

I find that statement to be deplorable because it suggests a moral equivalency between what the U.S. stands for and has done and what Saddam Hussein has done in that same prison. We have heard about and seen some evidence, and I believe there will be additional evidence coming out that reveals what Saddam Hussein did to people in that prison—the torture, the rape, the murder—absolutely despicable actions that have absolutely no comparative value to what occurred—if on more than a couple of occasions—by a handful of American soldiers who did wrong and who will be punished for doing wrong.

The difference between our morality and the morality of Saddam Hussein is it was his intention to inflict this kind of despicable horror, and the magnitude of it was horrific, whereas in the United States, we stand for exactly the opposite. We will punish those who conducted this kind of activity and we will make it clear that is not our standard. Again, the moral equivalency is so utterly lacking it is amazing to me anybody would even try to make that connection. This is especially sad in the week in which Nick Berg's death was brought home to us in such a

graphic way by the same kind of terrorists who held sway in Iraq under Saddam Hussein.

This is the kind of enemy we are fighting. It requires us to take stock about what we need to do as policymakers in discussing this publicly, because the message we send to the world, to terrorists, and to the Iraqis in particular, is going to play a large role in how people view our effort and, therefore, whether it can succeed in the long run.

If our leaders are criticizing our effort as an immoral effort, as nothing more than a continuation of what Saddam Hussein was doing, then it is doubtful our effort can succeed. Americans must stand up for what is right in this country and what they know our country to be, and we must make it crystal clear to the rest of the world we have a moral purpose, that we do have a commitment to the rule of law, and anything that goes outside of that rule of law will be dealt with appropriately. That is the difference between our society and the society we replaced in Iraq.

That is very critical for us to discuss and to not have our leaders undercutting us and, therefore, calling into question the legitimacy not only of the mission but of the activities of our soldiers and others fighting this war.

The third article I would like to discuss is an op-ed, actually, entitled "The Abu Ghraib Panic," May 14, Washington Post, by Charles Krauthammer. As usual, it takes a person such as Charles Krauthammer to put this into perspective. He always comes to the rescue when policymakers and pundits and others begin to fly off on tangents that miss the point, that begin to take us down the wrong path in terms of a logical analysis of what is going on. He tends to bring us back to the central point we need to consider and discuss and the policy that needs to be carried out.

His op-ed today brings us back to the central point by beginning with the discussion of those who have called for the resignation of the Secretary of Defense. He points out this exercise is what he calls "ministerial responsibility"—the notion that, in some parliamentary governments, if something goes wrong down below, the leader of that particular department resigns, or offers his resignation, in order to demonstrate the responsibility of the government. He points out that is not a doctrine that has held in the United States, where there is no responsibility of the individual involved.

Indeed, he points out even when there is responsibility for the individual—the higher up individual—and that individual takes responsibility, it has not been the case in this country to call for the resignation of the individual.

The example he gives is the one of former Attorney General of the United States Janet Reno, who not only was on duty when the Branch Davidian

compound in Waco was attacked by American forces in 1993 but ended in the deaths of 76 people. She not only was on duty, but she ordered the attack, which resulted in, among other things, the death of 20 children. That was an awful event. She took responsibility for it. She said, "It was my decision and I take responsibility." There was much applause for her willingness to do that. But she didn't resign. She was not asked to resign. She was not fired by the President, notwithstanding her direct responsibility for what had occurred.

Compare that to the case today with Secretary Rumsfeld, who, by all accounts, has done a tremendous job at the Department of Defense. He has successfully executed two wars. He is trying to transform our military. He is now involved in an effort to ensure the security of Iraq so power can be turned over on June 30; and a handful of soldiers, at a very low level, in a prison in Iraq commit crimes against prisoners somehow becomes his direct responsibility, such that he has to actually resign from his position in order, somehow, to demonstrate the morality of our position there.

He doesn't have to do that because it was not his responsibility. He was responsible for saying the laws of the Geneva Conventions apply. He was trying to make sure everybody under his command was doing their duty. In no way will it ever come to pass that responsibility, in terms of culpability for this action, went very far up the chain. As a result, it is more a frustration that some people don't know anything else to do that they call for his resignation. Of course, there is a political component, too. The President's enemies use this as a way to get at him. One can expect that in a political environment. But it has severe consequences when people around the rest of the world begin to think this is the opinion not only of key policymakers in America but represents a policy that should be carried out by our Government and, if it is not, somehow our Government is very wrong. So there are consequences of the people who discuss this in that light.

As Charles Krauthammer points out, that has never been the standard in the U.S. If you look to the case of Janet Reno, where there really was culpability, and yet she wasn't fired, or she did not resign, you can see this could be, in the case of many people, a political exercise rather than an exercise in responsible criticism.

The point Krauthammer tried to make here is this whole business about Secretary Rumsfeld is a sideshow, in any event, and that what is happening is some Americans who are not adequately grounded in what this country is all about, what the war is about, are beginning to panic. Let me quote something and then wonder aloud. He says:

The panic is unseemly. The pictures are shocking and the practices appalling. But how do the actions of a few depraved soldiers

among 135,000 negate the moral purpose of the entire enterprise—which has not only liberated 25 million people from 25 years of genocidal dictatorship, but has included a nationwide reconstruction punctuated by hundreds, thousands, of individual acts of beneficence and kindness by American soldiers?

Indeed, this panic, I believe, is due, among other things, to the fact that America has enjoyed such success and has had to sacrifice so little in recent time that Americans unfamiliar with the sacrifices and the moral purposes of previous engagements, such as World War I and World War II in particular, and Korea and Vietnam, unfamiliar with the horror of war and the requirement of a citizenry to back their fighters with steadfastness and courage and support, rather than panic at the first sign that something is going wrong.

This panic is due to a citizenry today that may not have been adequately educated to the fundamental purposes of why we are there—and to the extent that is the policymakers' fault, I will take responsibility for that as well—and perhaps are insufficiently grounded in the kind of conflicts we have fought in the past and why it was so important for the citizens in doing their part to support the effort and not panic at the first sign that something was going wrong.

I think of D-Day, the anniversary of which is coming up soon, and the terrible decision General Eisenhower had to make with the weather forecast suggesting a very difficult crossing of the channel, the predictions of German fortifications having been weakened being wrong so that when our troops hit the beaches, they were cut down by withering fire, the great number of casualties at Omaha Beach and all the rest where we thought it was going to go better than it did, and second-guessing of our generals all the way up to General Eisenhower would certainly have been warranted. But the American people did not do that, and the British people did not do that.

Winston Churchill, Franklin Roosevelt, and other leaders rallied the American people and the British people, the allies, to support the cause, notwithstanding the number of casualties that were occurring, notwithstanding the fact that efforts were going wrong.

This is what President Bush has tried repeatedly to do, to say: Look, we knew when we went into this it would be difficult, it would be costly, it would take a long time. I remember his State of the Union Address in which he said that, and it has been repeated many times since.

I think one thing we all appreciate about President Bush is that he does have a resoluteness, a willingness to make tough decisions and then the courage to stand by them. But we Americans have to back him in that. You cannot panic when the going gets tough. And in war, sometimes the going does get tough.

This is a case where it was due to our own fault. Some of our own soldiers did

something very wrong, and we have to deal with that. But that is not a reason to panic and believe that the effort in which the other 135,000 are engaged is wrong or is falling apart and cannot be achieved.

It is rather a time for us to go back to our moorings, what Americans believe in and what we understand was the purpose of this effort, and do what we can do in this effort, which is to support the effort, to support the decisionmakers, to support the Commander in Chief and, most of all, to support the troops.

I think of Pat Tillman, who played football in my home State, who decided to forego a lucrative football contract with the Arizona Cardinals because he wanted to do his part in this effort. He went to Iraq and then went to Afghanistan and was killed there. He did his part. The challenge to us is, what can we do? We cannot go over there and fight, but we can sure do something to support those who are doing the fighting. I do not mean we cannot question. That is our job. We do not just meekly go along with what everybody says about this, but we can certainly not do anything to undercut the effort of those putting their lives on the line. That is what we can do. That is our part. And it starts with not panicking, as Charles Krauthammer said.

Things go wrong in war. They went wrong in every war we fought. We practically got pushed off the Korean peninsula in the Korean war. Then General MacArthur, in a brilliant move in Inchon, landed behind enemy lines, drove the enemy back, and did what Americans always do in the end: We succeed when we do not panic.

I suggest to those who are wringing their hands today about what is going on in Iraq to just take a deep breath, stiffen your spine, and remember what this country has gone through in its great history. We have sacrificed a lot and it has been for good, moral purpose, and such is the case in Iraq.

Let me quote again from the Krauthammer op-ed:

We are obsessing about the wrong question. It is not: Is our purpose in Iraq morally sound? Of course it is. The question today, as from the beginning, remains: Is that purpose achievable?

Then he goes on to say this:

Doability does not hinge on the pictures from Abu Ghraib. It hinges on what happens on the ground with the insurgencies. The greater general uprising that last month's panic-mongers had predicted has not occurred. The Sadr insurgency appears to be waning. Senior Shiite clerics, local leaders and demonstrators in the streets of Najaf have told Moqtada Sadr to get out of town. Meanwhile, his militia is being systematically taken down by the U.S. military.

As for Fallujah, we have decided that trying to fully eradicate Sunni resistance is too costly in U.S. lives. Moreover, this ultimately is not our job but one for the 85 percent of Iraqis who are not Sunni Arabs—the Shiites and Kurds who will inherit the new Iraq. We have thus chosen an interim arrangement of local self-rule in the Sunni

hotbeds. And if that gets us through the transition of power to moderate Iraqis, fine.

This seems entirely lost on the many politicians and commentators who have simply lost their bearings in the Abu Ghraib panic. The prize in Iraq is not praise for America from the Arab street nor goodwill from al-Jazeera. We did not have these before Abu Ghraib. We will not have these after Abu Ghraib. The prize is a decent, representative, democratizing Iraq that abandoned the pan-Arab fantasies and cruelties of Saddam Hussein's regime.

That remains doable. What will make it undoable is the panic at home.

As I said, as usual, he is right on target.

So what does that teach us? Getting back to the beginning of the discussion of the Secretary of Defense and his responsibility, let's be careful of the message we send to the rest of the world. Some of my colleagues have said the Secretary must resign because we need to send a message to the Arab world. What message is it? That we are sorry? We have sent that message. That we take responsibility? We have already taken responsibility.

I think it sends a message of weakness. Remember what the mantra of Osama bin Laden is—that there are weak horses and strong horses, and the world will respect the strong horse. He believes he is the strong horse, that we are the weak horse. He cites over and over Lebanon, Somalia, Vietnam, and he believes that Iraq falls into the same category; that if his al-Qaida and their allies in Iraq can continue to inflict casualties on us, if we continue to have self-doubt, disunity, undercut our leadership, panic over what a few of our soldiers did in the prison, in the long run he will prevail because he is the strong horse and we are the weak horse. That is his entire philosophy, and it motivates a lot of people in that part of the world who hate us.

The way to defeat that philosophy is to be the strong horse because of our morality as well as our military power, because of what we stand for in terms of returning freedom to people who did not have it, and because we do not mean to gain anything personally from it except an additional degree of security from terrorists.

Mr. President, what we say matters. We need to conduct the debate and, indeed, a debate is entirely appropriate, but we need to conduct the debate in a way that will not undercut the effort of those who are putting their lives on the line. Sometimes even words in this Chamber go over the top. Sometimes words of my colleagues go over the top.

Certainly, there are many outside of this Chamber who reveal a panic of the kind that Charles Krauthammer has written about, which will undercut our ability to carry out our mission, and that, at the end of the day, is the important point.

So I urge my colleagues and all others who are discussing this issue to try to conduct the debate and discussion in a serious, responsible way that does not undercut the efforts of our leaders

and our troops on the ground. If we do that, then we will have done our part in achieving victory. We will have been responsible. We will not have undercut the effort, and I think we will have distinguished ourselves in the one way that we can act to achieve victory.

Teddy Roosevelt made a comment that kind of wrapped up what he did in life with all of the actions in which he engaged. Somebody asked him a question about his life and he said: I just have appreciated the opportunity that I have had to work on work worth doing.

What we are doing today is work worth doing. We need to remember that, be supportive of it, and be supportive of those we have asked to do the work.

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.

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

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

Mr. DAYTON. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

TRANSPORTATION FUNDING

Mr. DAYTON. Mr. President, this week brought the disturbing news that the Senate, the House, and the White House might not be able to agree on a new transportation funding bill, that we would have to set it aside then until next year to be acted upon. That would be disastrous for my home State of Minnesota, and I suspect for many of the States my colleagues represent.

Traffic congestion in our main metropolitan areas in Minnesota has worsened at alarming rates during the past decade. The deterioration of our roads, highways, and bridges throughout greater Minnesota, more rural areas of our State, has also reached crisis levels. More and more of our highways have become unsafe due to this deterioration and congestion.

More motorists are dying, being injured or maimed as a result. Business owners and farmers find that transporting their goods and products to market takes longer and is more costly. Some of the seasonal national weight restrictions force major employers such as Polaris, Artic Cat, and Marvin Windows, which are located in northwestern Minnesota, to have to re-route their trucks, adding time, expense, and unreliability that become major drawbacks to operating a business in Minnesota.

Businesses executives, their employees and their families, have to take longer to drive to and from work, school, and weekend cabins, and they are less safe in doing so. Every day and night, many thousands of Minnesotans endure these delays and disruptions.

They are angry and frustrated, and they rightfully want their Government to act on their behalf now. They have paid and they will continue to pay their Federal gasoline tax dollars into the highway trust fund, and they want that money fully expended on vitally needed highway improvement projects starting now.

Our Senate bill, the one we passed some time ago, responded to their needs. Our bill increased the highway and transit funding significantly over the next 6 years compared to the last 6 years. For my State of Minnesota, the increase is 81 percent, thanks to the overall increase which was passed with bipartisan support at the committee and the full Senate level, and with special appreciation to Senator GRASSLEY of Iowa, the chairman of the Senate Finance Committee, for correcting the ethanol penalty which was penalizing Minnesota and other States that placed a mandate on ethanol consumption as part of every gallon of gasoline.

Senator COLEMAN, my colleague from Minnesota, and I worked together to keep these provisions benefiting Minnesota in the Senate bill. Unfortunately, the House scaled back their overall bill from what even most of their Members wanted themselves, at the insistence of the White House. But the President said even that reduced level in the House bill is too high, and the Senate's version is too high a figure. In fact, the President set a level of funding that is \$60 billion less than in our Senate bill. That is \$10 billion a year less for highway and other transit projects throughout America.

We are told that every \$1 billion of spending on transportation projects creates 47,500 jobs. So \$10 billion a year less spending means 475,000 fewer jobs this summer, next summer, and throughout the next 6 years—475,000 jobs, American jobs, jobs that we could be putting into place right now. People in my State and your State would be going to work right now to perform vitally needed infrastructure improvement projects with dollars that have already been committed and received and are set aside for this purpose. Why doesn't that matter to the White House? Why can't we act as we should anyway to move this matter forward?

The President has his rightful prerogative to veto a bill with which he does not agree. I am told by the manager of the bill in the Senate that he believes we have the votes to override that veto because these projects are so important to so many Members, and rightfully so. He believes the House has the necessary votes to override a Presidential veto because the projects in the bill are vitally important to their districts. That is the way the system is supposed to work. If the President vetoes, we can attempt to override so the public interest is served.

From what I am reading this week, the majority leader and the Speaker of the House have said they will not take the conference committee report, the

final legislation, to the White House if the President is going to veto it. That means the President can dictate to the Congress the level of funding he will accept, and we have no choice but either to agree to that reduced level or to set the bill aside until next year.

That is not the way the process is supposed to work, if we believe in something—and we do. I commend Senator INHOFE, the manager of the bill, who has been tenacious and terrific at standing up for the needs of, I am sure, the State of Oklahoma, but also reflective of the urgent needs in my State of Minnesota and elsewhere, and saying this is the right thing to do.

On paper this may look like it is some kind of brand new fiscal responsibility that we certainly have not seen from the White House in the last 3½ years, with budget deficits extending now as far as the eye can see at record levels. But this is the wrong bill to sort of suddenly get fiscal religion and go on to make a spectacle of because these are capital expenditures that are going to benefit our country for an extended period of time, and as business owners, farm owners, homeowners know, the proper reason to go into debt is for capital expenditures for long-term improvements. If you are going to be fiscally prudent, then you pay cash for current consumption.

We have it backward. We are creating enormous deficits based on current consumption, and then when we get to a bill where we should legitimately be incurring debt, if we need to, for long-term capital expenditures, we are going in the other direction—for politics, for reelection politics, not for the public interest. We know that. I bet the Speaker knows that. Certainly the members in his caucus know that.

We need to stand up and speak out and insist that our voices be heard, that our proffer of responsibilities in this body on behalf of the people of our States be exercised. Our leader and the House leader should take this bill to conference and protect all the projects that are of concern to myself and members of my caucus—as the projects of importance to the members of the majority caucus will be, I am sure, protected, as they should be, just as is the tradition in the House. Writing those into the actual House bill will, I am told, ensure they will be protected, honored, for both the Republican and Democratic Members. That is the way the system has worked, I am told, in the past.

Frankly, I think we should dispense with all of those earmarked projects which benefit some States far more than others—more than my State—because of the way the memberships on committees and seniority falls, but that is a discussion for another day.

Given that is the system we have, I certainly understand why I and my colleagues on this side of the aisle need to and should have the right to assurances that our projects are going to be treated as they have been in the past

and not just discarded in the committee, as so many of our amendments and proposals have been in other legislation earlier this year and last year.

But that is something that can readily be resolved. That is a very minor consideration compared to what, I am told, is the real obstacle right now, and that is to get the leadership of the Senate and the House to be willing to take a bill to the President that we say is the right thing to do. We know what that is. It is what our Senate bill provided overall and for our respective States. It is a fiscally responsible bill because it uses every dollar in the highway trust fund over the next 6 years—not more than that, not less than that. We know our States need those expenditures.

Let the President veto the bill if that is his decision. Then let's override it here and in the House and then it becomes law. Then those 475,000 Americans who are either drawing unemployment benefits—or many of them, I believe, have probably exhausted their unemployment benefits; just this week we found the Senate unwilling to provide an extension of those benefits—can go back to work in construction jobs and related jobs.

This bill more than anything we have done in tax adjustments will put Americans to work—now, this summer, right away—when they need work. We can't turn our back on that opportunity and that responsibility. Let's make the system work the way it is supposed to work. Let's pass this bill. Let's get it to the White House. Let's take it back and do what is necessary to make it law.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The time of the Senator has expired. The Senator from Rhode Island.

DEATH OF HOPE HARRIS

Mr. CHAFEE. Mr. President, it is with great sadness that I speak about a true friend and colleague. For 26-years, Hope Harris served the people of Rhode Island as a member of my staff, and prior to that, on the staff of my late father, Senator John H. Chafee. Hope Harris was known to thousands of Rhode Islanders who have visited and telephoned their Senator as the sympathetic and trustworthy professional answering the phone and the door at the front desk in their Senator's Providence office. She was without peer in her ability to convey, in a brief encounter, that the mission of the Senator's State operation is to help people in any way possible. On May 12, Hope died after a difficult struggle with cancer.

Hope's impact on my ability to represent the people of Rhode Island cannot be overstated. Her impact was felt by every anxious senior citizen who experienced a problem with Social Security, by every parent calling to plan a family trip to Washington, every young

idealist determined to save the world, and every beleaguered citizen convinced that the government is after them. When they called or visited my office seeking help—an answer or action or reassurance—Hope was the first person they encountered in their quest. In the space between saying, “Good morning, Senator CHAFEE’s office,” and hitting the “transfer” button, Hope put people at ease, instilled calm, became a friend.

People were not numbers to Hope; they were souls in search of a connection, one that maybe Hope could help them find. One of her greatest gifts was her ability to see the humanity of all people, regardless of social station, political power, religion, or race. In that, she remains an example for us all. Thanks to Hope’s extraordinary ability to convey that human connection, Rhode Islanders knew that our office was a welcoming and responsive place.

Hope remained optimistic and of good cheer regardless of what was going on in her personal life. In 2001, she lost her husband. And she has faced, and lost, a daunting battle with cancer. Through it all, Hope demonstrated the highest level of dedication to her job, never betraying to any individual constituent that they were anything but the center of her universe.

Hope was involved in many volunteer organizations throughout the course of her career. She was most recently active with the AIDS Project of Rhode Island and she cherished her involvement with the First Pentecostal Church and the Congdon Street Baptist Church.

In 2003, Hope celebrated her 25th year as a Senate employee. And just recently, on May 3, 2004, Hope was the proud recipient of the Federal Employee of the Year Award by the Rhode Island Association of Federal Employees. This honor was richly deserved. All of the Chafee family and the myriad of people who have been touched by the life of Hope Harris will miss her joy for living. She was the heart and soul of our Providence office.

I ask unanimous consent to have printed in the RECORD a copy of an article that appeared in the Providence Journal on March 11, 2004, that speaks to the true essence of Hope Harris.

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

[From the Providence Journal, Mar. 11, 2004]

ON THE JOB: HOPE HARRIS, CHAFEE AIDE

(By M. Charles Bakst)

Hope Harris, 72, the receptionist in Sen. Lincoln Chafee’s Providence office, likes looking out from her desk at 170 Westminster St. The view from this 11th floor aerie is striking and she says, “It gives you a sense of being close to the Lord.”

Harris’s is the voice you are likeliest to have heard if you’ve phoned the Chafee shop during the last quarter century. For most of that span, of course, the senator was John Chafee, Lincoln’s late father.

Harris is enthusiastic, pleasant, and at peace. She has an advanced case of cancer that has spread from her liver to her breast

area. She comes in now only four days a week; if she tires, she goes home. I find it remarkable that she works at all, but Harris says, “I love what I’m doing.”

Barbara Berke, a Harris pal and former colleague says, “She’s happy and she wants to make the world happy.”

Chafee marvels at Harris’s patience in fielding constituent calls. “People like to tee off, they like to vent, and sometimes they go over the top,” he says.

How ironic that some people don’t realize Harris is black.

A man phoned to grouse about Jesse Jackson. Harris, no Jackson fan, said she wouldn’t argue. But the man said, “I wish they’d put him on a boat and send him back to Africa—and all the rest of them, too.” Harris said, “Well, I didn’t do anything. I don’t want to go to Africa. I don’t know anybody there.” The man laughed and said he didn’t mean her. By the end of the conversation, Harris says, they were friends.

Once a man who’d called for years came in to meet her. “He looked at me. He said, ‘Are you Hope?’ I said, ‘Yeah.’ He said, ‘You’re black!’ I said, ‘I know. What should I do?’ He said, ‘Oh, nothing, it’s all right.’”

Harris hears from people with immigration problems, or folks looking for a job reference, or who think Republican Chafee should bolt parties, or who are lonely, or who have strong views on abortion—including backers of legislation outlawing a form of late-term abortion and who talk about fetuses having their brains sucked out. “They want me to get the willies,” she says. (Like Chafee, she opposes such bans.)

Harris adds, “Everybody that calls here is somebody important to me because they’re a voter. . . . When they are abusive, when I’m through with them, they’re nice. They calm down. John Chafee said, ‘Hope can tame the wildest beast.’”

State Rep. Maxine Bradford Shavers, D-Newport, Harris’s sister-in-law says the key to understanding her is that “she’s a Christian.”

While Chafee press aide Debbie Rich, who is Jewish, sits by and listens, Harris defines “Christian” this way: “It means that Debbie and I have the same blood running through our veins. If Debbie bleeds, I get the Band-Aid. If I bleed, Debbie gets the Band-Aid. If I know you’re hurting, I will get you water. I love you with all of my heart and I love everybody.”

As Harris, who was raised a Baptist, mulls her cancer, she says her life is in God’s hands and she has no fear. She knows who she wants to speak at her funeral, which will be at Beneficent Congregational Church, more spacious than the Providence Church of God where she currently worships. She has picked out some hymns, including “How Great Thou Art.”

When I talk of death, I say someone has died. But you might hear Harris say “passed.” She explains, “It means they go from one degree of grace to another. They pass over.” Though her body will return to dust, “My spirit will soar.”

She declares, “In my heart, I just look to the heavens and I think, ‘My God! Some day I’ll see Him face to face.’”

Mr. CHAFEE. Mr. President, I yield the floor.

NATIONAL POLICE WEEK

Mr. LEVIN. Mr. President, this week our Nation’s police officers gathered in Washington, DC to commemorate National Police Week. The week long tribute to our Nation’s Federal, State, and local police officers honors those

who have died in the line of duty and those who continue to serve and protect us at great personal risk everyday.

The first National Police Week was celebrated in 1962 when President John F. Kennedy signed an Executive Order designating May 15 as Peace Officers Memorial Day and the week in which that date falls as “Police Week.” Every year since, tens of thousands of Federal, State and local police officers have come to Washington to honor those that have made the ultimate sacrifice.

In addition to a number of other events, police officers join for a candle light vigil at the National Law Enforcement Officers Memorial. The first memorial service took place on May 15, 1982. On that date, approximately 125 police officers assembled in the Senate park to honor the law enforcement officers who had been killed that year. Over the past 22 years, over 3,000 law enforcement officers from around the country have been so honored.

Today, there are approximately 870,000 sworn law enforcement officers serving in the United States. Over the past 10 years, a total of 1,658 law enforcement officers have died in the line of duty, of which 145 were killed in 2003. Over the course of this week, all 145 of these officers have been honored and tonight their names will be added to National Law Enforcement Officers Memorial.

One way we can further honor the sacrifices of these brave men and women is to pass sensible gun safety legislation. A number of my colleagues, with my support, have sought to do just that. That is why I cosponsored the Gun Show Background Check Act introduced by Senator REED. I support that bill because I believe it is an important tool to help to prevent guns from getting into the hands of criminals. This bill simply applies existing law governing background checks to persons buying guns at gun shows. It is supported by a variety of law enforcement organizations including the International Association of Chiefs of Police, Major Cities Chiefs of Police, National Black Police Association, Police Foundation and National Troopers Coalition.

The law enforcement community has also asked Congress to reauthorize the 1994 Assault Weapons Ban. The 1994 law banned a list of 19 specific weapons, as well as a number of other weapons incorporating certain design characteristics such as pistol grips, folding stocks, bayonet mounts, and flash suppressors. The assault weapons ban also prohibited the manufacture of semiautomatic weapons that incorporate at least two of these military features and which accept a detachable magazine. This law is scheduled to expire on September 13, 2004.

I support the efforts of the law enforcement community who are calling for legislation extending the law. In 1994, I voted for the assault weapons ban and, last month, I joined a bipartisan majority of the Senate in voting

to extend the assault weapons ban for 10 years.

Law enforcement support for the assault weapons ban is broad. It includes the International Association of Chiefs of Police, the Major Cities Chiefs Association, the Police Foundation, the Police Executive Research Forum, the International Brotherhood of Police Officers, the National Association of School Resource Officers, the National Fraternal Order of Police, National Organization of Black Law Enforcement Executives, the Hispanic American Police Command Officers Association, and the National Black Police Association. I hope the Senate will stand with our Nation's law enforcement community and support these important pieces of gun safety legislation.

I know all of my colleagues join me in remembering those who have served and continue to serve in our Nation's law enforcement community and thanking them for their sacrifices.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. SARBANES. This week, beginning May 9th, we celebrate National Police Week, culminating in Peace Officers' Memorial Day on May 15th. It is a time for us to remember the dedicated men and women who put their lives on the line every day to make our communities safer.

In 1962, President John F. Kennedy designated May 15th as Peace Officers' Memorial Day, and the week in which May 15th falls as National Police Week. During this week, tens of thousands of law enforcement officers from around the world converge on Washington, DC to participate in activities highlighting the importance of law enforcement to citizens' daily lives.

This past year, 154 police officers were killed in the line of duty. That is 154 fathers, mothers, brothers, sisters, daughters, and sons who did not go home to the families waiting for them at the end of the workday. Since the National Law Enforcement Officers Memorial Fund started keeping such statistics, 16,500 police officers have been killed in the line of duty. In my home State of Maryland, we have lost a total of 246 police officers. On average, one law enforcement officer is killed somewhere in America every 53 hours. The risk encountered by those law enforcement officers serving in communities throughout this country—men and women who get up every morning to go to work knowing it is entirely possible they will not come home at the end of the day—is enormous. Such commitment deserves more than one week to appreciate.

We spend a lot of time, especially in this day and age, as we should, worrying about and praying for the nearly 150,000 young men and women serving in our armed services in Iraq and Afghanistan. At the same time, I believe it is important to reflect on the 870,000 men and women serving in law enforcement who protect our homeland day in

and day out. These are the police officers who ensure that our children get to school safely, that our roads are safe from the dangers of speeding or drunk drivers, that ensure our neighborhoods are protected from the violence associated with gangs and drugs, and that come to our aid when tragedy strikes.

I want to make mention of a few poignant examples of the risk that those involved in this profession face every day. Maryland State Police Trooper First-Class Anthony Jones was killed last week when a drunk driver struck him while he was fulfilling his duty seeking to help another trooper respond to a car accident. Trooper Jones left behind a wife and two daughters.

Then there is Detective Thomas Newman of the Baltimore City Police Department who was shot to death in 2002 in retaliation for his testifying against a man who had shot another police officer in 2001. Detective Newman was ambushed by three assailants who continued to fire at him even after he fell to the ground.

Also deserving of our thoughts and prayers this week are the families of Prince George's County Sheriffs Deputies Elizabeth Magruder and James Arnaud. The two were shot and killed while serving a court order for an emergency psychiatric evaluation on a man in Prince George's County. Magruder left behind a husband and four-year-old son while Arnaud left behind a wife, son, daughter and grandchildren.

These are just a few examples of the brave men and women who put their lives on the line so that all of us can sleep more soundly at night. The sacrifices they and their families have made are too numerous to count and to deep for words to express. But at least during this National Police Week, we are able to take a moment to appreciate their efforts and the efforts of their colleagues that are still serving. As St. John said, "No one has greater love than this, to lay down one's life for one's friends."•

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT

IRS FREE FILE PROGRAM

Mr. ALLEN. Mr. President, I commend the chairman and ranking member of the Finance Committee, Senators GRASSLEY and BAUCUS, for their work on the Tax Administration Good Government Act. The legislation provides taxpayer safeguards, streamlines tax administration, and simplifies the tax code. I do have some concern with one provision in the bill. Specifically, the bill also includes a provision on the IRS Free File Program. The Free File Program is the result of a public-private partnership agreement between the IRS and the Free File Alliance, LLC, a group of tax software companies managed by the Council for the Electronic Revenue Communication Advancement, CERCA. It is important

to continue to promote these types of public-private partnerships and it is my hope that we can work together on this provision as we move to conference with the House of Representatives.

Mr. GRASSLEY. I thank the Senator from Virginia. The IRS Free File Program is a direct result of the goal that Congress set for the IRS to have 80 percent of returns filed electronically by 2007. The partnership agreement calls for the Free File Alliance to provide free tax preparation and filing to at least 60 percent of all taxpayers or approximately 78 million individuals who file an individual tax return. Each participating software company has its own eligibility requirements. The eligibility requirements ensure that lower income, disadvantaged and under-served taxpayers benefit from the free file program with the Free File Alliance, LLC. The provision in the bill was intended to ensure that the taxpayers participating in the Free File Program were affirmatively consenting to solicitation for other products or services. I look forward to working with him to ensure that we continue to promote such public-private partnerships.

Mr. BAUCUS. I agree with Chairman GRASSLEY. It is our intent with the Free File provision to protect the integrity of our voluntary tax system by providing lower income, disadvantaged and under-served taxpayers the ability to meet their filing obligation without subjecting themselves to unwanted marketing. I also commit to work with Senator ALLEN as we conference with the House.

Mr. ALLEN. I thank the chairman and ranking member.

CONTINUING CARE FACILITIES

Mr. GRAHAM of Florida. Mr. President, I want to thank the chairman and ranking member of the Finance Committee, Senators GRASSLEY and BAUCUS, for including a provision that I supported as part of the Tax Administration Good Government Act to level the playing field for residents of qualified continuing care retirement communities.

Continuing care retirement communities, or CCRCs, are the oldest form of seniors housing in America, dating back to the late 1800s—offering a variety of living arrangements and services to accommodate residents of all levels of physical ability and health. The goal of a CCRC is to accommodate changing lifestyle preferences and health care needs. In general, CCRCs make independent living, assisted living, and skilled nursing available all on one campus. The CCRC approach offers residents the psychological and financial security of knowing that, should they require increased levels of care, it is readily available at one location. As a private pay option, CCRCs also play an important role in the Nation's long-term care delivery system because very few, if any, CCRC residents will ever require Medicaid funding for their long-term care.

Mr. GRASSLEY. I thank the Senator from Florida for his comments. This is a provision that I have also supported. The provision included in the bill will go a long way for those seniors who live in the affected CCRCs. I also want to clarify one point with Senator BAUCUS. It is my understanding that the purpose of the amendment is to bring the tax treatment of those CCRCs described in section 7872(g) into alignment with the treatment that has historically been afforded to those CCRCs that are not described in section 7872(g). In other words, there is no intent to alter the treatment that the IRS has historically provided for CCRCs that are not described in section 7872(g). I am committed to working with Senator GRAHAM as we move this legislation forward.

Mr. BAUCUS. I agree with the chairman. There is no intent to alter the treatment that the IRS has historically provided for CCRCs that are not described in section 7872(g). This is a critical point that could affect a large number of seniors. We do not want there to be any misunderstanding on this issue since the immediate consequences could be significant—with large numbers of seniors potentially having to pay additional taxes. I also know that Senator MIKULSKI has expressed an interest in this provision. I give my commitment to both Senators GRAHAM and MIKULSKI to work with them on this provision as we go to conference with the House.

Mr. GRAHAM of Florida. I thank the chairman and ranking member for clarifying the intent of this provision.

ADDITIONAL STATEMENTS

LOCAL LAW ENFORCEMENT ACT OF 2003

• Mr. SMITH. Mr. President, I wish to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

Edgar Garzon, 35, died three weeks after he was attacked when leaving a gay bar in Jackson Heights, NY, on August 14, 2001. Garzon suffered a skull fracture in the attack and died at Elmhurst General Hospital. Garzon had just left Friends Tavern when two men in a red car exchanged words with him and followed him toward his home. At the intersection, the suspects got out of their car, pounded Garzon with either a baseball bat or lead pipe, then fled with his wallet.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing

current law, we can change hearts and minds as well. •

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CRAIG, from the Special Committee on Aging:

Special Report entitled "Developments in Aging: 2001 and 2002, Volume 1 and Volume 2" (Rept. N. 108-265).

Mr. GRASSLEY, from the Committee on Finance, without amendment:

S. 2424. An original bill to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes (Rept. No. 108-266)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. GRASSLEY:

S. 2424. An original bill to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes; from the Committee on Finance; placed on the calendar.

By Mr. COCHRAN (for himself and Mr. BYRD):

S. 2425. A bill to amend the Tariff Act of 1930 to allow for improved administration of new shipper administrative reviews; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. Res. 363. A resolution designating October 16, 2004, as "World Food Prize Day"; considered and agreed to.

ADDITIONAL COSPONSORS

S. 1301

At the request of Mr. DEWINE, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1301, a bill to amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, and for other purposes.

S. RES. 362

At the request of Mr. GRAHAM of Florida, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of S. Res. 362, a resolution expressing the sense of the Senate on the dedication of the National World War II Memorial on May 29, 2004,

in recognition of the duty, sacrifices, and valor of the members of the Armed Forces of the United States who served in World War II.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COCHRAN (for himself and Mr. BYRD):

S. 2425. A bill to amend the Tariff Act of 1930 to allow for improved administration of new shipper administrative reviews; to the Committee on Finance.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2425

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "New Shipper Review Amendment Act of 2004".

SEC. 2. REPEAL OF NEW SHIPPER BONDING PRIVILEGES.

Section 751(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)) is amended—

- (1) by striking clause (iii); and
- (2) by redesignating clause (iv) as clause (iii).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 363—DESIGNATING OCTOBER 16, 2004, AS "WORLD FOOD PRIZE DAY"

Mr. COLEMAN (for himself and Mr. DAYTON) submitted the following resolution; which was considered and agreed to:

S. RES. 363

Whereas Dr. Norman E. Borlaug founded the World Food Prize Foundation, an organization that honors people who have improved the quantity and quality of food worldwide;

Whereas Dr. Borlaug received his bachelor of science degree in forestry and his master's and doctorate degrees in plant pathology from the University of Minnesota;

Whereas Dr. Borlaug has received over 35 honorary doctorate degrees from institutions in the United States and abroad;

Whereas Dr. Borlaug is hailed as the "Father of the Green Revolution" for developing strains of high-yield, disease-resistant wheat that have increased food production and helped feed the hungry;

Whereas Dr. Borlaug received the Nobel Peace Prize in 1970 for expanding food production, reversing food shortages in India and Pakistan, and feeding hundreds of millions of people throughout the world;

Whereas Dr. Borlaug received the National Academy of Science's highest honor, the Public Welfare Medal, in 2002 for his work to fight hunger; and

Whereas Dr. Borlaug is believed to have saved more lives than any other person who has ever lived, thanks to his decades-long crusade to deliver millions from starvation and human suffering: Now, therefore, be it

Resolved, That the Senate—

(1) designates October 16, 2004, as "World Food Prize Day"; and

(2) commends the contributions made to the disciplines of agriculture and science toward the goal of eliminating world hunger.

JUDICIAL NOMINATIONS

Mr. KYL. Mr. President, on behalf of the leader, I announce that discussions are continuing to find a way to work through the judicial nominations that are pending on the Executive Calendar. We had hoped to begin scheduling the noncontroversial judges for votes by the full Senate. At this time, there are still objections to scheduling these votes and, therefore, it will be necessary to file cloture on one of these nominations today.

Having said that, the majority leader is still hopeful that an agreement can be reached and that this cloture vote will not be necessary.

EXECUTIVE SESSION

NOMINATION OF MARCIA G. COOKE, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

Mr. KYL. So, Mr. President, on behalf of the leader, I now move to proceed to executive session for the consideration of Calendar No. 606, Marcia Cooke.

The PRESIDING OFFICER. The question is on agreeing to the motion. Without objection, it is so ordered. The motion is agreed to.

The clerk will report the nomination. The assistant journal clerk read the nomination of Marcia G. Cooke, of Florida, to be United States District Judge for the Southern District of Florida.

CLOTURE MOTION

Mr. KYL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant journal clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Executive Calendar No. 606, the nomination of Marcia Cooke.

Bill Frist, Orrin Hatch, John Ensign, Gordon Smith, Mike Crapo, Thad Cochran, James Inhofe, Richard Shelby, Saxby Chambliss, Lindsay Graham of South Carolina, Chuck Hagel, Arlen Specter, George Allen, Jeff Sessions, John Cornyn, Charles Grassley, Mitch McConnell.

Mr. KYL. Mr. President, I ask unanimous consent that this vote occur at 2:15 p.m., on Tuesday, May 18, and that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. KYL. Mr. President, I ask unanimous consent that the Senate resume legislative session.

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

WORLD FOOD PRIZE DAY

Mr. KYL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 363 which was submitted earlier today by Senators COLEMAN and DAYTON.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant journal clerk read as follows:

A resolution (S. Res. 363) designating October 16, 2004, as "World Food Prize Day."

There being no objection, the Senate proceeded to consider the resolution.

Mr. KYL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 363) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 363

Whereas Dr. Norman E. Borlaug founded the World Food Prize Foundation, an organization that honors people who have improved the quantity and quality of food worldwide;

Whereas Dr. Borlaug received his bachelor of science degree in forestry and his master's and doctorate degrees in plant pathology from the University of Minnesota;

Whereas Dr. Borlaug has received over 35 honorary doctorate degrees from institutions in the United States and abroad;

Whereas Dr. Borlaug is hailed as the "Father of the Green Revolution" for developing strains of high-yield, disease-resistant wheat that have increased food production and helped feed the hungry;

Whereas Dr. Borlaug received the Nobel Peace Prize in 1970 for expanding food production, reversing food shortages in India and Pakistan, and feeding hundreds of millions of people throughout the world;

Whereas Dr. Borlaug received the National Academy of Science's highest honor, the Public Welfare Medal, in 2002 for his work to fight hunger; and

Whereas Dr. Borlaug is believed to have saved more lives than any other person who has ever lived, thanks to his decades-long crusade to deliver millions from starvation and human suffering: Now, therefore, be it

Resolved, That the Senate—

(1) designates October 16, 2004, as "World Food Prize Day"; and

(2) commends the contributions made to the disciplines of agriculture and science toward the goal of eliminating world hunger.

ORDERS FOR MONDAY, MAY 17, 2004

Mr. KYL. Mr. President, on behalf of the leader, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon on Monday, May 17; I further ask that following the prayer and 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 then begin a period of morning business until 2:30 p.m., with the time equally divided between the two leaders or their designees; provided that at 2:30 p.m., the Senate begin consideration of Calendar No. 503, S. 2400, the Department of Defense authorization bill, as provided under the previous order.

The PRESIDING OFFICER. Is there objection? The Senator from Nevada.

Mr. REID. Mr. President, I will not object, but I do want to make a statement before the Senate adjourns for the day. The two leaders have been working the last several days to come up with some way to dispose of judges who are on the Executive Calendar. We believe we have done a credible job as a Senate. We have approved 173 judges. There have been five turned down by the minority. We now have the lowest vacancy rate in some 14 years.

There are two problems with going forward. Of course, I don't think it is any secret President Bush has defied the Senate with recess appointments. So we have to have some finality there as to what he is going to do in the future. The other problem is the judges we voted on multiple times before. There has to be some consideration to those issues and how we deal with them. I think with the conversations going on between the two leaders we should be able to do that. I am confident and hopeful we will not need the cloture vote set for Tuesday.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I thank the Senator from Nevada.

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

PROGRAM

Mr. KYL. Mr. President, Monday the Senate will be in a period of morning business until 2:30 p.m. At 2:30 p.m., the Senate will begin consideration of the Defense authorization bill. The chairman and ranking member of the Armed Services Committee will be here on Monday to begin working through amendments to the bill. Chairman WARNER and Senator LEVIN have indicated they will have an amendment to be voted on at approximately 5:30 on Monday. Therefore, the next rollcall vote will be at 5:30 on Monday afternoon.

It is the leader's intention to complete action on this bill next week. Therefore, Senators who wish to offer an amendment are encouraged to contact the bill managers as soon as possible so they can schedule floor time for consideration of amendments.

Also on Monday we are hoping to consider the bioshield legislation under an agreement. Senators GREGG and KENNEDY will be here and available to begin consideration of that bill shortly

after noon, if that agreement is reached. If we are able to consider the bioshield legislation on Monday, we would delay passage of the bill until Tuesday.

Moments ago cloture was filed on the nomination of Marcia Cooke to be a district judge for the Southern District of Florida. If necessary, the cloture vote on the Cooke nomination will occur on Tuesday, May 18 at 2:15 p.m.

In addition, yesterday we locked in a short time agreement on H.R. 3104, providing medals to our soldiers participating in Operating Enduring Freedom and Operation Iraqi Freedom. The vote on passage of this bill will occur on Tuesday as well.

We have a very busy agenda for the next week, and the majority leader encourages all Members to plan for votes throughout the week.

ADJOURNMENT UNTIL MONDAY,
MAY 17, 2004

Mr. KYL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 11:50 a.m., adjourned until Monday, May 17, 2004, at 12 noon.