after case, he was the lone member of that Court to sound the alarm about the dangers that arise when a court detaches itself from a principled and honest commitment to the Constitution of the United States of America and the laws passed by Congress. He saw the dangers in that, and he dissented many times—on matters of great principle in an intelligent and effective way.

He played a role in the demise of judicial activism as a dominant view of the Court. By “judicial activism”—I will paraphrase Senator Hatch’s definition of it—it means when a judge allows their personal or political views about what is good policy or bad policy to affect their rulings in a case. It is not faithful to the Constitution when you twist the words of the Constitution or of a statute so they come out to mean what you would like them to in order to achieve the result that you prefer. Chief Justice Rehnquist loved our Constitution, the one that we have, the good parts of it and the parts he may not agree with. He loved every section all and respected each one of them. He followed them and thought to them. He understood liberty in America is dependent on order. Look what is happening, so sadly, in New Orleans: police are threatened, doctors and nurses could not get out to help or rescue people when they broke down. As the Founders of our Republic never doubted the Government and the law enforcement of the United States of America. The States and counties and cities had to have certain authority to maintain order or we would never have liberty. This extreme commitment to libertarian views can undermine the basic order necessary to allow liberty to flourish in our individual capability first. He understood that very critically.

An example of the dangers he saw on the Court would be in death penalty cases. Chief Justice Rehnquist, as Associate Justice and as Chief, fully understood the Constitution makes at least eight references to capital crimes, to not being able to take someone’s life without due process; at least eight references were made in that great document to the death penalty. How could the Constitution declare the death penalty was unconstitutional when it absolutely approved it?

Two Justices dissented in every single death penalty case, saying they thought it was cruel and unusual punishment. What a weird, unprincipled dangerous interpretation of the Constitution. Juries broke down. The state of Texas had the death penalty against that tide, often as a lone Associate Justice.

Until now, people have come to realize that the Constitution and laws of this country allow a State or the Federal Government to have a death penalty, if they choose to have it. If you do not like that, take it to your legislative branch. The Constitution does not prohibit it, for heaven’s sake. The Constitution explicitly authorizes it.

He had a good understanding of church and State. I remember Senator Reid, the distinguished majority leader now, when he was the assistant leader and he worked on that in his book, his year when they were in the majority, and the Ninth Circuit struck down the pledge of allegiance, he criticized the Ninth Circuit. I have been a big critic of the Ninth Circuit, but I remember making an observation that time saying big a critic of the Ninth Circuit and as much of a critic of their striking down the Pledge of Allegiance, I have to say many Supreme Court rulings on separation of church and State make us so extreme that could well be justified under language of the United States Supreme Court. The Supreme Court has given us a very confused jurisprudence on what is a legitimate separation of church and State in America.

We got to the point in one case, the Jaffree case from Alabama, the Supreme Court, by a 6 to 3 majority, struck down a moment of silence in a classroom. Justice Rehnquist dissented in that case, as he consistently dissented against some of the confused thinking in those cases.

If this court had followed Justice Rehnquist’s thoughts and opinions on the question of separation of church and State, we would not have the confusion we have today. We would not have one case where the Ten Commandments in Texas are OK and another case in Alabama where the Ten Commandments are not OK. What kind of jurisprudence is that? We need to get that straight. The Court has failed, in my view, in establishment clause jurisprudence. But Chief Justice Rehnquist has been a consistent and sound and reasonable voice on how to strike the proper balance. We need to go back and continue to read those opinions and see if we cannot learn from them.

He also was a student of America. He wrote a number of books, grand inquests about impeachments, before we had the Clinton impeachment case in this body. He wrote a book, “All The Laws But One,” that deals with the rule of law in America in a time of crisis, and dealt with the Civil War and other times in our country. He was a historian who understood America, understood our exceptional nature, our constitutional Constitution. He understood that deeply. Every day when he went to work, every opinion he ever wrote was consistent with his view and respect for America, her heritage, her rule of law, and her Constitution. He understood that deeply. Every day when he went to work, every opinion he ever wrote was consistent with his view and respect for America, her heritage, her rule of law, and her Constitution.

He understood that States have certain powers in our country. He understood that the Federal Government, through the commerce clause, has broad power, but there are limits to the reach of the commerce clause. It does not cover every single matter the United States Senate may desire to legislate on, to the extent that the federal government controls even simple, discreet actions within a State. He re-established a respect for State law and State sovereignty through a number of his federalism opinions.

Madam President, we have lost one of the Nation’s great Justices, a man who respected our Constitution, gave his life to his country, through a professional career. All of us should be proud of that service and honor his memory. I yield the floor.

The PRESIDING OFFICER. The Senator from California.

HURRICANE KATRINA

Mrs. BOXER. Madam President, I rise today with a heavy heart. We have all watched in horror as the Gulf Coast has been struck by what could be called the worst natural disaster in our history.

Over the weekend, Chief Justice Rehnquist, who served our Court and country with such distinction for 33 years, and showed such bravery in the last months of his life, passed away.

We have now lost nearly 2,000 young men and women in Iraq, and we still do not have, in my opinion, a credible plan, a mission, a strategy to achieve success and bring our troops home. Gas prices are putting horrible strains on most Americans.

There is a tremendous amount of anxiety in America today. I feel it when I go home to California. We must continue to press forward, to strive to achieve success and bring our troops home. Gas prices are putting horrible strains on most Americans.

Lives hang in the balance in this disaster and, God forbid, in the next one. It is difficult to put into words how heartbroken we all are for Americans affected by Hurricane Katrina. Thousands of people have lost their lives. Far more have lost their homes, their jobs, their communities. Brave souls everywhere are still searching for some semblance of normalcy while trying to keep others alive and hopeful.

I even heard a doctor on CNN talking about being forced to make the impossible choice of whom to save and whom to leave behind to die.

Yes, the acts of bravery are being celebrated, as they should be—neighbor helping neighbor, churches filling in for FEMA, local law enforcement putting their own hardships aside to work 24 hours a day helping others.

But there are images, such as this one, that I show them, that I leave us in tears. It shows a makeshift grave along the road—a makeshift grave. Somebody put a sheet over a body, and it looks
like bricks are holding down the sheet. There is a cross on top, and it says: “Here lies Vera. God help us.” God help us, indeed. How can this have happened in America? Here we are, the most powerful and prosperous country in the world, and our people have to write notes on handmade graves to get attention.

Well, words of compassion are not enough. We must show those who have suffered so much that their Government will help them find their missing relatives and rebuild their lives, homes, and communities.

The $10.5 billion we appropriated was an important start but just a start. We should not wait another day to give all the victims of Katrina immediate access to Medicaid or to exempt them from the recent bankruptcy law. We should not be cutting Medicaid now, and that is exactly what is in the budget bill the Republicans are bringing before us.

We should not wait another day to provide temporary housing for all those displaced, including emergency vouchers. We also should use our military bases that are vacant to house people until they are on their feet again.

We should not wait another day to make sure that Halliburton, or any other company receiving Federal contracts, employs some of the estimated 500,000 to 1 million people who are now jobless and working to rebuild their own communities. You are giving these companies Federal contracts. Let them step to the plate and do their share. There are two similarities that I see between Iraq and this hurricane. The administration did not have a plan for either, and Halliburton will end up making billions of dollars for both.

Hurricane Katrina has shown a spotlight on the best and the worst of America. We have seen the inspiring courage of first responders and survivors and dedicated men and women working around the clock to help them. We have also seen those who would loot, and take advantage of this tragic situation. We have seen the heroics of the press, which put a spotlight on the full extent of the tragedy.

We have also seen the deadly chasm between the haves and the have-nots, with the poorest among us left behind, literally and figuratively, to weather the storm. And, yes, we have seen, in my opinion, an unacceptable response from our Federal Government. The President himself said that, and then he backed away.

I know the President has said he will launch an investigation, but it is not sufficient for the President to investigate his own administration. Congress must fulfill its oversight responsibility. I thank Senator COLLINS and Senator LIEBERMAN for pledging to hold hearings on the Government’s response to this tragedy.

Today, an AP wire story that was just handed to me says, “The top U.S. disaster official”—that is Michael Brown—“waited hours after Hurricane Katrina struck the Gulf Coast before he proposed to his boss,” that is Michael Chertoff, “sending at least 1,000 Homeland Security workers into the region to support rescuers, internal documents show.”

Quoting from the AP wire story:

The same day Brown wrote Chertoff, Brown also urged local fire and rescue departments outside Louisiana, Alabama and Mississippi not to send trucks or emergency workers into disaster areas without an explicit request for help from state or local governments.

We must fulfill our oversight responsibility. I agree with Senator CLINTON that we should also create an independent Katrina commission. Hurricane Katrina has raised alarming questions about our Nation’s ability to prepare for and respond to disasters.

Last Thursday, the President told Diane Sawyer that we did anticipate a serious storm, and I quote him:

I don’t think anyone anticipated the breach of the levees.

Well, that is unbelievable. All you had to do was look at FEMA’s own report in 2001, which listed the three most likely catastrophic disasters our country could face. What were they? A massive earthquake in California, a terrorist attack on New York City, and a major hurricane hitting New Orleans.

All you had to do was look at the Houston Chronicle, which predicted this. The New Orleans Times-Picayune predicted this. The National Geographic predicted this. There was a 5-day simulation in July of 2004 to specifically address a disastrous hurricane in New Orleans. The LA Times reported that in late May the Army Corps of Engineers in the New Orleans district formally notified Washington that hurricane storm surges could knock out two of the big pumping stations that keep the city dry.

On the day before the tragedy struck, an AP wire story said:

Experts expect Katrina to turn New Orleans into Atlantis, leaving up to 1 million homeless.

They did not think the levees would break.

And what about the budgets? Despite repeated requests from New Orleans for more Federal money to protect the city, the press reported that funding for Corps of Engineers projects in the New Orleans area for 44 percent below the levels for 2001 and 2005. This is unacceptable.

Michael Brown should go. He is a nice man. But I agree with Senator MIKULSKI, he should go. He should go because he does not even have the experience, he is not even the head of an Arab horsemen’s association. That is not training to step into a disaster the size of the one we have seen.

Now, in California, we know how important FEMA was during a disaster. After the Northridge Earthquake, James Lee Witt, the head of FEMA, was out there. We counted on him, and Lord knows how many lives he saved.

He knew what he was doing. We built up FEMA during that time, all of us working together. It has now been turned into a shadow of its former self.

I also agree we ought to make FEMA again an independent agency. Senator Byrd tried to do this. He offered an amendment that said: Let’s wait before we put FEMA under Homeland Security. Twenty-eight of us voted for that. It did not pass. I warned at that time very clearly that this was making me extremely nervous. My quote was: “Purging the Federal Emergency Management Administration, [FEMA] lock, stock, and barrel, into this new Department I just think is going to be a real problem for us.”

I am very worried about accountability.

Now, I do not say this to imply that I knew what was going to happen. I did not. But I do have some common sense, and I know you need one person in charge who has the ability, yes, to move mountains.

Yesterday, we had a briefing on this up in room 407. We had the whole Cabinet there. I listened to a lot of good people. I would have preferred one person I could hold accountable.

There are many more things I am going to say today. But I do believe for years we tried to get interoperable communications funding—for years. I had a bill. Senator DASHNOW had a bill. It got through the Senate. It got taken out by the House. We still do not have emergency workers able to talk to one another.

So we need to move fast. We need to move fast before the next disaster strikes. Now, we all pray in the Senate we will not have another disaster like this, but we must plan in case we do. That is our job. That is our work. We must set aside a lot of other things we are going to do around here to get this right because we know we are living under the threat of a terrorist attack that could occur in any city in this country. And this is a sad case for us and not one that should be emulated.

We all have to move forward. And, yes, the people who did not do the right thing should not be heading these agencies. In my state of California, we know how it feels to lose your bearings, your home, and your sense of security. I saw it so many times in my congressional career, in my Senate career. Earthquakes, fires, floods, mudslides; you name it, we have had it. You need strength at the Federal Government level when these things happen.

Look at the city of New Orleans, what they tried to do with the police officers. Two police officers committed suicide. They had nothing, and they were trying to secure a city for days. Well, it is hard to look at this, but we have to look at it. We have to do it with an independent commission. We have to make sure people who are counting on us get their lives back.

And we can do it. This is America. But we need to hold people accountable. We need to be credible with our response. The job is a tough one, but we need to do it, and we need to do it soon.

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owe nothing less to the people we represent.

Madam President, thank you.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I was also at Katrina last night in the secure room in S. 407. I have to say, I was absolutely blown away by how much the Federal Government has mobilized to try and help in the Gulf region. There is no question that we knew this city was 10 to 12 feet under sea level and that there was bound to be some sort of a problem happen. I think there is plenty of blame to be cast around to everybody. The important thing that we ought to be considering is solving the problem and getting that city back on its feet. From what I heard last night, the Federal Government is doing everything it possibly can. Frankly, I believe every agency, including FEMA, has done a good job under the circumstances. This has been the kind of great cooperation. There is no question about it. All of the criticism in the world is not going to change that.

The fact is, we had a number of Cabinet-level officials there, from the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Labor, and I thought they made a pretty good case. I think we ought to get the job done and quit worrying so much about criticizing.

Mrs. HUTCHISON. Mr. President, over the weekend, I visited several hurricane relief shelters around the State of Texas. Hearing the stories from the victims of Katrina firsthand has reminded me that whenever natural disasters occur, we must help those affected recover and move on with their lives. But this is no easy task, and the impact of Katrina will be felt for many years to come.

I know this personally. Growing up in Galveston County, I lived through Carla and other hurricanes. I have never forgotten the experience of driving to my parents' house because we had not heard from them. Telephone service was out, so we packed our car with water and other supplies and drove to their home. As we approached, we saw more and more of the hurricane's destruction. Finally, we reached their battered house, and fortunately found them unharmed.

Dealing with disasters has made Texans strong and compassionate. Whenever people encounter adversity, they are forced to make a decision about how to respond. So often, Texans have stood tall, displaying virtue in the heart of the moment. When battered by a hurricane, Texans have increased their resolve, battling the elements to survive. When threatened by funnel clouds, they have reacted with bravery and risked their lives to save the lives of others. And after the moment of danger has passed, they have showed kindness and generosity in helping neighbors get back on their feet.

Approximately 80 percent of the city of New Orleans has been covered in water, and thousands of people suddenly found themselves homeless and with no one to turn to. I am proud of how my State has responded. About 250,000 Katrina evacuees are in Texas at this time, and more are expected. As many as 100,000 evacuees will be housed in 250 Federal周转 centers. In addition, the State and FEMA officials estimate another 150,000 Katrina victims are living in hotels.

In the midst of this tragedy, my heart was warmed by the way the Texans who opened their arms and homes to their fellow Americans. Public institutions, many churches and charities, and numerous individuals have provided food, shelter, and money for those escaping the hurricane's devastation.

In one story that was particularly touching, a Texas couple who had just moved into their new home took their old home off the market in order to provide shelter to a family of nine in the months ahead.

In another part of Texas, a company has offered about 40 vacant apartments in a retirement community, plus food, transportation, and housekeeping for those who need. A company will donate $1 million to the American Red Cross and will offer rail transportation in support of hurricane relief and recovery efforts.

The Texas Health and Human Services Commission, the office open throughout the holiday weekend and has certified more than 50,000 Louisiana families for emergency benefits. One Houston office extended its Friday hours until 2 a.m. Saturday morning.

The Texas Department of Family and Protective Services is providing assistance with the placement of Louisiana foster care children, including 49 children from a New Orleans facility. The agency has identified placements for these children if needed and is working with shelters to ensure that any children who have been separated from their families receive help quickly.

I am also very proud of my own staff, many of whom generously gave up their weekend to answer phones at the Red Cross.

I had a personal experience that was very heartwarming when I talked to a woman in the Dallas Convention Center who said her son was in the Navy and she wanted to get him a message that she was safe in Houston and that his wife and son were fine. We were able to contact him on the USS Harry Truman later that night to inform him. He sent back a very long e-mail to his mother which will be delivered to her soon. It is important we do these little things to try to help as much as we can, and the Senate stands ready to do that.

One woman receiving aid in Texas thanked the Senate and gave them a message to pass along:

Thank you for everything. God bless.

She went on to say that if they were ever in New Orleans once it is back in order, to please look her up so she could show them some New Orleans hospitality. We know New Orleans will recover, and we can't wait for that party.

To my friends back home in Texas, you repeatedly make me proud and I am honored to be your Senator. And to my neighbors along the Gulf of Mexico, know that Texas and the Nation stand with you. God Bless Alabama, Mississippi, Louisiana, and all of the United States of America.
year old Pittsburgh-based international charity, is sending a tractor-trailer full of donations, including 5,000 pairs of new shoes donated by CROCS Inc. of Boulder, CO, and new clothing and hygiene items.

Private charitable societies have also stepped up to the plate, including the Loyal Christian Benefit Association headquartered in Erie, PA, as well as the Knights of Columbus and Thrivent. The Greek Catholic Union of the United States, headquartered in Beaver, PA, has donated $15,000 to Catholic Charities, Salvation Army, and American Red Cross.

The University of Pittsburgh Medical Center, UPMC, is ready to deploy two helicopters to States hit by the hurricane if emergency management officials ask for them.

Additionally, UPMC has offered to treat hurricane patients at its Pittsburgh hospitals or set up a 250-bed medical facility around the disaster area.

Carnegie Mellon University has offered to assist Tulane University in New Orleans in any possible way, which could include CMU taking on students from Tulane so they do not fall behind in their classwork.

The charitable efforts of so many Americans during this crisis is a reminder that government should be making laws that support and encourage such philanthropy. Legislation such as the bipartisan CARE Act benefits a sector that is vital during these times of crisis. The estimated $2 billion in food-donation incentives that the CARE Act provides would allow donors, restaurants and corporations to give more of their surplus food to local food banks and soup kitchens. Additionally, individuals would be willing to donate even more if current law was more favorable to those who charitably donate.

Additional funding for food-donation incentives that the CARE Act provides would allow donors, restaurants and corporations to give more of their surplus food to local food banks and soup kitchens. Additionally, individuals would be willing to donate even more if current law was more favorable to those who charitably donate.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I ask unanimous consent that the vote on S. Res. 234 be delayed until 12:10.

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

HONORING CHIEF JUSTICE WILLIAM H. REHNQUIST

Mr. HATCH. Mr. President, I want to pay tribute to a good man whom I knew well, who was a great judge, the late Chief Justice William Rehnquist.

His service and leadership on the Supreme Court, the principles he consistently followed, and the steady hand with which he guided the judiciary make him one of the judiciary’s very best.

William Hubbs Rehnquist served on the Supreme Court of the United States for 33 years and almost 8 months.

He was the eighth longest serving of the Court’s 108 members, having recently surpassed the tenure of the legendary Justice Joseph Story.

He was the fourth longest serving of the Court’s 16 Chief Justices, and one of just five individuals to have served as both Associate and Chief Justice.

William Rehnquist’s service was a powerful mixture of the personal and the professional.

He brought a kind of dignified practicality, or perhaps it was practical dignity, to what is one of the most formal and respected posts in the Federal Government.

William Rehnquist was the historian who could play a practical joke, the defender of the judicial institution who played poker with his colleagues.

We will miss this scholar and author, who also led an annual Christmas carol sing-along for the Court’s employees.

Yesterday, his former clerks surrounded his casket and carried it past the Court’s employees.

We were all touched by Justice Sandra Day O’Connor weeping at the loss of a man who had been a fellow law student at Stanford University in 1950. She was a fellow Justice for the past 24. He was No. 1 in his class; she was No. 3. They were close friends.

The respected legal analyst Stuart Taylor wrote that one attribute of greatness is being esteemed by one’s colleagues. Whether his fellow Justices voted with him or against him on the cases before the Court, they all cherished and esteemed him.

Liberal icon Justice William Brennan called Chief Justice Rehnquist a breath of fresh air.


Justice Lewis Powell said he had a good sense of courage and was both generous and principled.

When President Nixon nominated William Rehnquist to be an Associate Justice in 1971, Attorney General John Mitchell said he expected Justice Rehnquist to be independent.

Before the Judiciary Committee, the nominee pledged as his fundamental commitment to totally disregard his own personal beliefs when interpreting and applying the law.

Democratic Senator John McClellan of Arkansas, a member of the Judiciary Committee, explained in the pages of the New York Times why he supported what he called a distinguished nominee.

He said that William Rehnquist would not contribute to the trend of pursuing abstract goals driven by ideology rather than law. As both Associate and Chief Justice, William Rehnquist confirmed Senator McClellan’s judgment.

Chief Justice Rehnquist strongly defended the prerogatives of the judicial branch. This alone might give pause to those who believe the judiciary was already too powerful.

But he coupled that commitment to institutional vigor with a fidelity to constitutional rigor.

While insisting that the Court was the primary interpreter of the Constitution, he did not join those who said the Constitution’s meaning ebbed and flowed with the latest cultural and political fad.

Chief Justice Rehnquist understood that we entrust interpretation of our laws to unelected judges only because, as he said, they promise to keep their own moral and political viewpoints on the sideline.

Over time by example and leadership, this principle helped him move the Court toward its traditionally modest role within our system of government.

Commentators and reporters discussing the Chief Justice’s legacy almost reflexively use the moniker “Lone Ranger” to describe the new Associate Justice Rehnquist.

He was sometimes a lonely dissenter on a Court that saw itself as the vanguard of social change.

In that role, however, he reminded us of the fundamental principles that should guide the judiciary.

Judges may not exercise judicial review based on their personal opinions, preferences, or agendas. They must take the Constitution as they find it and apply it as it is.

As new Justices joined the Court, and Chief Justice Rehnquist continued articulating and applying such traditional principles, he found himself in more company.

While some talk of Chief Justices as able to bring colleagues together in a particular case, Chief Justice Rehnquist did so, patiently and steadily, over the long haul of his entire tenure.

In a 1996 address at American University’s Washington College of Law, Chief Justice Rehnquist called judicial independence the “crown jewel” of the American judicial system.

He took this series of principles as personal as well as a judicial level.

In this last year or so, William Hubbs Rehnquist lived and finished life on this earth in his own independent way. He shared what he wanted to share, when and how he chose to share it.

He carried himself with dignity, in a way protecting his privacy publicly, if such a thing is possible.

He was a good man and a good judge.

Our lives, individually as citizens and collectively as a nation, are much better for him having been among us.

I knew him personally. I know what a great man he was, as far as I am concerned. I know what a supreme intellect he was on that Court. I know what a decent, honorable, honest person he was on that Court. I can remember one lunch I had with Chief Justice Rehnquist, Justice Scalia, and Justice Kennedy.

It was terrific luncheon, filled with intellectual repartee. It was a luncheon that I will never forget. It was a luncheon that I will never forget. I remember him saying to time as his colleagues made some of their points. He had this wry sense of humor that I suppose came from the