

This ability to love and share God's love with others was his greatest gift, his greatest accomplishment, and his greatest legacy.

Many of his former students have spoken of his encouraging example, quick wit, unmatched humor, and how his influence is still felt in their lives today. Countless individuals were transformed by their relationship with Charles Kothe. Through these lives and because of Charles Kothe's influence on these lives, God will effect positive change in our world for generations to come. He will be greatly missed.

Let me conclude by stating that Charles Kothe's tenacious energy, tremendous intellect, and inspiring enthusiasm has undoubtedly influenced countless numbers across our great land. This scholar, this patriot, this man of God, this friend committed himself to our Republic as a prudent, optimistic, and faithful son. May his spirit live on.

#### AMERICAN SERVICEMEMBERS' PROTECTION ACT

Mr. LEAHY. Mr. President, I read with interest the statement that Representative HYDE made on July 23, 2002 about the American Servicemembers' Protection Act (ASPA) during House consideration of the conference report on H.R. 4775, the fiscal year 2002 Supplemental Appropriations bill for Further Recovery From and Response to Terrorist Attacks on the United States.

Although neither Mr. HYDE nor his staff were present during the negotiations on ASPA, he suggests that the House readily accepted section 2015, also known as the "Dodd-Warner amendment", which was unanimously included in the Senate-passed version of ASPA. I do not think it is necessary to engage in an exhaustive discussion of the legislative history of the Dodd-Warner amendment because it is clear on its face. And, the first rule of legislative interpretation is that one looks to the history only if a provision is ambiguous.

To the extent that the legislative history is relevant, I believe that I can comment on this issue, as I was involved with the drafting of the amendment and was an original co-sponsor. Moreover, I was involved in negotiations over section 2015 during the conference on the Supplemental, and my staff was actively engaged in discussion on this issue throughout.

Contrary to Mr. HYDE's suggestion that the House receded on section 2015 because it is ineffectual, the House understood that the effect of the Dodd-Warner amendment is to qualify provisions of ASPA, including sections 2004, 2006, and 2011, in cases involving foreign nationals. It was for that reason that the House conferees repeatedly and vigorously sought to remove all or part of it from the conference report.

Those present at the negotiations know that the House agreed to accept

the Dodd-Warner amendment only when the Senate agreed to drop its provision related to the United Nations Population Fund (UNFPA), which House supporters of ASPA strongly opposed.

Mr. HYDE also asserts that section 2015 "simply reiterates that this legislation does not apply to international efforts besides the International Criminal Court to bring to justice foreign national accused of genocide, war crimes, or crimes against humanity." As a former prosecutor and Chairman of the Senate Judiciary Committee, I appreciate the creativity of Mr. HYDE's argument. But he is trying to put a square peg into a round hole, and one would have to rewrite the provision to support his interpretation. The flaws in this interpretation are self-evident, if one simply reads the text of section 2015:

Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosovic, Osama bin Laden, other members of Al Qaeda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

The language of this section is clear, and it is noteworthy that any iteration of the phrase "besides the International Criminal Court" does not appear anywhere in the text.

In fact, when Senator Dodd and I were drafting this amendment, I specifically added the phrase "and other foreign nationals accused of genocide, war crimes or crimes against humanity" to ensure that this section would apply to the International Criminal Court (ICC). The ICC currently has jurisdiction over these three crimes.

As I mentioned earlier, the importance of this phrase was not lost on the House, and opponents of the Dodd-Warner amendment tried repeatedly to nullify or remove it. It was even reported to me that, at the eleventh hour, House staff members sought, unsuccessfully, to insert the word "other" before the phrase "international efforts to bring to justice . . .", in an attempt to prevent the Dodd-Warner amendment from applying to the ICC and heavily qualifying portions of ASPA.

Another important phrase in section 2015 is: "Nothing in this title shall prohibit . . .", which makes unequivocally clear that no provision in ASPA prevents the U.S. from cooperating with the ICC in cases involving foreign nations.

No one disputes the fact that Congress has serious concerns about Americans coming before the ICC, which is the reason that ASPA was passed. During consideration of ASPA, Senator WARNER made that point clear:

This amendment would protect U.S. military personnel and other elected and appointed officials of the U.S. government against potential criminal prosecution by an international tribunal court to which the United States is not a party.

However, through the Dodd-Warner amendment, Congress sets a different

standard with respect to non-Americans. Congress wanted to be clear that the U.S. can cooperate with international efforts, including those by the ICC, to bring foreign nationals to justice for genocide, war crimes, and crimes against humanity, as Senator DODD pointed out during the Senate debate:

My amendment merely says that despite whatever else we have said, when it comes to prosecuting these people, we would participate and help, even though we are not a signatory or participant in the International Criminal Court.

This is precisely why the Senate unanimously accepted the Dodd amendment and why the lead sponsor of ASPA, Senator WARNER, joined as co-sponsor of the amendment.

I see that Chairman BYRD is here on the floor and I would ask if he agrees with my recollection of events that transpired during the conference negotiations on the Supplemental and my interpretation of the Dodd-Warner amendment.

Mr. BYRD. I agree with what Senator LEAHY has said about section 2015 of the Supplemental Appropriations bill. The House strongly resisted efforts to incorporate the Dodd-Warner amendment in the bill, and receded only in exchange for the Senate agreeing to drop a provision on UNFPA.

Mr. LEAHY. I thank the Chairman. I want to take this opportunity to say a few words about the importance of section 2015. A primary reason for the creation of the ICC is to remove the uncertainty and protracted negotiations surrounding the establishment of ad hoc tribunals to try those accused of genocide, war crimes, and crimes against humanity. In the future, the ICC may be the only venue for bringing to justice those accused of these heinous crimes.

The Dodd-Warner amendment simply ensures that the United States can assist the ICC, or other international efforts, to try foreign nationals accused of war crimes, genocide, and crimes against humanity. It is not difficult to think of a number of instances when it would be in the interest of the United States to support such efforts. For example:

What if 50 Americans, traveling overseas, are brutally killed by a suicide bomber and the ICC attempts to bring to justice the perpetrators of this horrendous act?

What if a group of terrorists commits war crimes against U.S. military personnel who are posted abroad and the ICC is involved with efforts to bring them to justice?

What if the ICC prosecutes some future Saddam Hussein, Slobodan Milosovic, or Osama bin Laden who is responsible for the deaths of thousands of people?

Would we want the President of the United States to be hamstrung by ASPA in these, or a number of other cases, and prevented from actively supporting efforts by the ICC to bring

these types of notorious criminals to justice? Of course not.

Finally, I want to point out that Mr. HYDE also goes to great lengths to provide an interpretation of sections 2004, 2006, and 2011. Although I was not involved with the negotiations on ASPA with the Administration, I must say that the State Department's efforts with the House on this issue were miserable, and I know this is not typical of the way the Department represents U.S. interests abroad.

The explanation that the State Department offers for supporting ASPA is that it did so in exchange for releasing the U.N. dues. This does not withstand the most basic scrutiny.

In the wake of the September 11 attacks, there was overwhelming support in Congress to assist with efforts to prevent and respond to international terrorism. After September 11, without any quid-pro-quo, the Senate voted to confirm Ambassador John Negroponte to the position of U.S. representative to the United Nations. I am confident that the State Department, with a little ingenuity, could have persuaded the Republican majority in the House to meet our obligations to the United Nations—something that is clearly in our national security interests—without having to agree to support ASPA.

In any event, I take issue with Mr. HYDE's interpretation of sections 2004, 2006, and 2011, even though they are heavily qualified by the Dodd-Warner amendment. Again, one should look to legislative history only if the text of the provision is unclear, and in this case the text of ASPA is clear and does not support his reading. For example, there is nothing in the waiver language concerning the President's executive authority or authority as Commander-in-Chief that limits the waiver to a subset of this authority. Moreover, ASPA clearly states that the waiver applies to "any action or actions . . ." not to "some" actions.

For Mr. HYDE's interpretation to be correct it would be necessary to add language to the provision such as: "if it would be unconstitutional for Congress to restrict the exercise of this authority." Moreover, ASPA states that it applies to "any action" taken by the President as Commander-in-Chief or exercising "the executive power" of the Presidency. If the President has the constitutional authority to take an action, this provision permits him to do so, notwithstanding any other language in the bill. It is not relevant whether Congress could have prohibited such actions.

Further, no matter what was said between those who negotiated ASPA, Mr. HYDE's interpretation of the provision was not necessarily in the minds of the majority of Members voting on ASPA because it simply was not mentioned during the House or Senate debates. These waiver provisions complement section 2015 which is highly relevant in interpreting them, as Senator WARNER alluded to during the Senate debate.

Congress decided that it did not want to tie the President's hands if he determined that it makes sense for the United States to cooperate with any international body, including the ICC, in prosecuting foreign nationals accused of genocide, war crimes, and crimes against humanity.

I want to thank Senators DODD and WARNER for their efforts to ensure that ASPA does not include overly-burdensome restrictions on the President that prevent the U.S. from cooperating with the ICC. I also want to thank Senator DODD's staff for providing valuable advice on this issue.

#### ARMY CORPS OF ENGINEERS ARTICLE

Mr. DOMENICI. Mr. President, I rise today to include in the RECORD today an inspiring and uplifting occurrence in my home State of New Mexico. Percent news from any Army Corps of Engineers publication, Engineer Update, provides a particular instance in which the Corps went the extra mile to successfully rescue sand hill cranes under uncommon circumstances.

In the middle of repairs on Jemez Dam the cranes were foraging for food and getting trapped in the mud left over from having to drain the reservoir. The depth of the mud and the size and nature of the cranes made the situation extremely hazardous for anyone to get involved.

After bringing in a special boat that could handle the mud they were able to capture the birds and get them to safety where they were cleaned and released. All the while, the Corps put forth the measures to prevent anymore birds from being trapped in the mud.

This was an exceptional effort on the Corps of Engineers' part to handle both the job at hand and the surrounding effects of their labor. I commend them on their concern for the environment in the midst of their already tough labor.

I ask unanimous consent that a copy of the article be printed in the RECORD.

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

#### TRAPPED BIRDS RESCUED FROM MUD

(By Joan Mier)

#### ALBUQUERQUE DISTRICT

When Jemez reservoir was drained Nov. 1 to repair a bulkhead guide on the dam, no one could have foreseen the effect it would have on sand hill cranes, which were about to begin their migration to the Bosque del Apache. Using Jemez, about 30 miles from Albuquerque, N.M., as a stopover point on their journey was common. What was not common was the particular area they chose to land in when they began their migration Nov. 6.

"These birds land between 3 p.m. and 6 p.m. The sheen on the mud left behind after the reservoir drained looked like water to these birds, and some of them chose to land there," said Susan Shampine, Chief of Operations of Division. About 58 birds became mired in the 30-foot deep mud of the drained reservoir.

Rescue efforts posed a couple of big challenges. First, getting to the birds was problematic and risky. Second, the five-foot-tall birds with long and very strong beaks can be dangerous, according to biologist William DeRagon. "The beaks of sand hill cranes have been known to crack the skull of a cow," he said.

District personnel located a hovercraft operator, but the craft could not operate on the reservoir because of the pudding-like consistency of the mud.

"We also contacted the Army National guard because we were thinking maybe we could use one its helicopters, but they said the prop wash from the rotors would do more harm than good," Shampine said.

Meanwhile, as these efforts were underway, the district immediately initiated deterrent activities to prevent any more cranes from landing in the mud. Spotlights, horns and firecrackers were largely successful in preventing more cranes from landing in the area. However, a few more became trapped there, according to Ron Kneebone, project manager.

"We think what happened was that cranes that landed elsewhere at the reservoir would begin foraging for food at dawn and wander over to the mud flats and become stuck," he said. After that, deterrent methods were also initiated at dawn.

Although one bird was captured on Nov. 8 and treated and released at the Bosque a couple of days later, personnel were not having much luck reaching the other cranes. As news of the trapped birds hit the media carloads of concerned citizens began showing up at Jemez interested in saving the cranes.

"Conditions at the reservoir were extremely dangerous," Kneebone said. "We certainly appreciated that people were concerned, but we couldn't risk endangering human life." Therefore, the road leading to the area was closed to the public.

A break came when personnel contacted New Orleans District and learned about an engine that could enable a regular motorboat to operate in mud. The 20-horse-power engine was flown in overnight from Go-Devil Outboard Motors in Baton Rouge, LA.

"We got it on Nov. 14 and began testing it the next day," Kneebone said. "That afternoon, we began recovery efforts using trained volunteers and Corps personnel, and we were successful in capturing nine cranes."

Rescue operation continued through the migration season, and 15 cranes were rescued. Of those, three died and 12 were successfully treated and released.

Most of the rescued cranes were cleaned up and rehabilitated at the Rio Grande Zoo in Albuquerque, N.M. Each bird took 45 minutes just to clean because each feather had to be cleaned separately, according to Melissa Stock, editor of Zooscape Magazine.

"It was a three-person job," Stock said. "One person had to hold its feet, another its legs, and then another cleaned the bird."

"We received a lot of help and cooperation from other agencies and organizations," said Kneebone. He credited the Santa Ana Pueblo, which owns the land at the reservoir, U.S. Air Force, and Hawks Aloft for assisting in efforts to both rescue the cranes and prevent more from landing in the area.

#### LIVESTOCK DISASTER LEGISLATION

Mr. GRASSLEY. Mr. President, during the conference on the farm bill, the conferees threw out my bipartisan amendment on reasonable payment limits. I was extremely disappointed