

reluctant to conduct inquiries of the truthfulness of an admission because of the perceived risk to both the unit and the individual soldier.

Commanders stated to the Task Force that they had difficulty in balancing the enforcement of the Policy and the requirement to maintain morale, unit cohesion, good order, and discipline. Commanders expressed concerns that the Policy precludes them from conducting an inquiry when presented with credible information of behavior that demonstrates a soldier may have a propensity to engage in homosexual conduct. They believe the Policy precludes them from exercising reasonable discretion in determining the necessity to conduct an inquiry.

Information gathered by the Task Force determined that guidance on reporting harassment based on sexual orientation by soldiers and investigation into such harassment by leaders is unclear and confusing. Soldiers and leaders expressed frustration with knowing how and to whom to report harassment and how to handle incidents of this type of harassment. They expressed the belief that all harassment should be dealt with uniformly.

In summary commanders and leaders at all levels have an inherent responsibility for establishing a command climate that promotes good order and discipline essential to accomplishing the Army's mission. This responsibility includes promoting unit cohesion by identifying and eliminating harassment before it occurs or results in reports of violations of Army Standards.

EXHIBIT II

OFFICE OF THE UNDER SECRETARY
OF DEFENSE

Washington, DC, March 11, 2003.

Hon. JOHN W. WARNER,
Chairman, Committee on Armed Services, U.S.
Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in reference to the nomination of Major General Robert T. Clark, United States Army, for appointment to the grade of lieutenant general and for assignment as Commanding General, Fifth United States Army that the President recently sent to the Senate. The President previously forwarded Major General Clark's nomination to the Senate on September 10, 2002; however, his nomination was not acted upon by the Senate prior to the Senate's sine die adjournment on November 22, 2002.

The Secretary of Defense considered reported information concerning Major General Clark. Major General Clark was in command of the 101st Airborne Division (Air Assault) and Fort Campbell at the time Private First Class Barry Winchell, a member of the command who was perceived to be homosexual, was murdered in his barracks by another member of the command. The Department of the Army Inspector General conducted an investigation into the facts and circumstances surrounding the death of Private First Class Winchell and the Inspector General conducted a command climate assessment at Fort Campbell. Neither the investigation nor the command climate assessment determined that Major General Clark was culpable. We previously provided you with a copy of the Department of the Army Inspector General's Report and this incident was addressed in detail at an Executive Session of the Senate Armed Services Committee in the 107th Congress.

I have attached a copy of the following information for your consideration: chronology of the actions and initiatives taken by the Department of Defense and the Department of the Army immediately following the death of Private First Class Winchell; a detailed chronology of published

policies and actions of the dignity and respect for all soldiers directed by Major General Clark while serving as the Commanding General of the 101st Airborne Division and Fort Campbell; and a list of initiatives implemented by Major General Clark with respect to Homosexual Conduct Policy subsequent to the death of Private first Class Winchell.

After careful review of all information, the Secretary of Defense and the Secretary of the Army continued to support Major General Clark for appointment to the grade of lieutenant general and for assignment as Commanding General, Fifth United States Army. When considered in light of Major General Clark's past performance and future potential, we believe proceeding with the nomination is clearly in the best interest of the Department of the Army and the Department of Defense.

The Department appreciates your assistance in facilitating the confirmation of pending nominations.

Sincerely,

CHARLES S. ABELL,
Principal Deputy.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, I thank the chairman of the committee, Senator WARNER, for all of his courtesies during the consideration of this nominee. I mentioned during my comments that we wanted to get additional answers. He has been extremely accommodating to those of us who raised the questions, as he always is as the chairman of the committee. I thank him for his fairness and ensuring that all of those who had concerns were able to conduct our concerns in accordance with the rules. I thank him very much for all of his courtesies.

Mr. WARNER. I thank my colleague.

Mr. KENNEDY. Senator BUNNING I know has a great interest in this. I thank him also.

I will address the Senate briefly on another matter which is of importance and consequence to the Senate. Then I will yield the time because I know my colleague wants to address this issue. Then we will be prepared to move to a vote.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 17 minutes of the 40 minutes.

Mr. KENNEDY. I thank the Chair. If you would let me know when 15 minutes have been used, I would appreciate it.

CONFERENCE REPORT ON MEDICARE

Mr. President, in a very few days we are going to be confronted with the conference report on Medicare. There is no more important issue facing the Congress and no more important issue to senior citizens and their families. Every senior citizen, every child of senior citizens, and every American should understand that this legislation must be defeated or drastically modified.

This conference report represents a right-wing agenda to privatize Medicare and to force senior citizens into HMOs and private insurance plans. The day it is implemented, it will make millions of seniors worse off than they are today. It is a cynical attempt to

use the elderly and the disabled's need for affordable prescription drugs as a Trojan horse to destroy the program on which they have relied for 40 years.

It is important to understand how we got to this point.

First of all, we all understand that Medicare is one of the most beloved programs this Nation has ever enacted. It is depended upon by seniors all over this country. It is a program which is relied on and depended upon, and it works. If there is a failure in the Medicare Program, it was not to have included a prescription drug program in the legislation we passed.

That really is not what this current conference report is all about. This conference report is going to threaten Medicare in a very significant and important way—in a way that those of us who believe in Medicare should not permit.

We started in the Senate with a bipartisan bill to expand the prescription drug coverage. We also provided additional choices to private insurance coverage for senior citizens as the President requested. The bill was not a solution for the problems senior citizens face. It only provided about \$400 billion between now and 2012 toward the prescription costs that will total \$1.8 trillion. But it was a start, a downpayment. It was a fair and balanced compromise that protected Medicare and protected senior citizens. That is why it passed by 76 votes. Only 11 Democrats voted no; only 10 Republicans voted no.

The House took a different course. They passed a bill that was designed to radically alter Medicare, not for the benefit of the elderly. That is why it passed by a slim partisan majority of one vote. Now the conference has been hijacked by those who want to radically alter Medicare, privatize, to voucherize it, to force seniors into HMOs and into private insurance plans.

The bill the Senate will consider shortly is not a bill to provide a prescription drug benefit. It is a bill to carry out the right wing agenda and asks the elderly to swallow unprecedented changes in Medicare in return for a limited and inadequate small prescription drug benefit.

This conference report is so ill-conceived, not only does it put the whole Medicare Program at risk, it makes 9 million seniors, almost a quarter of the Medicare population, worse off than they are today. If this bill passes, the country will want to know: Where was their Senator when the Senate debated a bill that left a quarter of all seniors with worse drug coverage than before the bill passed? Where was their Senator when the Senate debated a so-called premium support demonstration that jacked up senior citizens' premiums—senior citizens who live on a fixed income, who have a median income of about \$14,000—starting us down the road to the unraveling of Medicare? Where was their Senator when the Senate debated a bill that stacked the

deck against Medicare with a \$12 billion slush fund for PPOs and much higher payments for HMOs than standard Medicare? Where was their Senator when the bill gave away \$6 billion to health savings accounts that could jeopardize whole systems of health insurance?

On issue after issue after issue after issue, this report abandons the bipartisan Senate bill and capitulates to the partisan right-wing House bill. On some issues it is even to the right of what the House passed.

One of the most important of these destructive changes is a concept called premium support. It should really be called insurance company profit support or senior citizen coercion support. It replaces the stable, reliable, dependable premium that senior citizens pay for Medicare today with an unstable, unaffordable premium.

Under premium support, the administration's own estimates show the average Medicare premiums will initially jump 25 percent. That is the administration's estimate. Several years ago the estimate was a whopping 47 percent.

The truth is, no one really knows how high the Medicare premiums could rise. But rise they will. But we do know this. Over time, the increase will become higher and higher and higher and higher. That is just average premiums. Under premium support, how much you pay will depend on where one lives, and the amount could change dramatically from year to year. In Florida, you will pay \$900 in Osceola and \$2,000 if you live in Dade County. This chart demonstrates the price of premium support. This is not my estimate of what the premiums are going to be. This is the estimate of the Medicare actuaries. If you live in Dade County, you will pay \$2,050; if you live in Osceola, you will pay \$1,000, twice as much. Explain that to someone who has a house in Dade County when they find out their neighbor is paying half of what they are paying because of premium support. This is just the beginning.

Premium support is a vast social experiment using senior citizens as guinea pigs. If it works as the proponents intend, it will raise the premiums in Medicare dramatically and force senior citizens to join HMOs and PPOs to get prescription drugs. Why would anyone want to make the destructive changes to the Medicare Program that have served senior citizens so well for 40 years? The answer is a radical ideology. They say Medicare is bad. HMOs and PPOs are good.

There is no mystery here. We know what this is all about. The principal supporters of premium support are those people who are strongly opposed to Medicare. Many of our colleagues—our friends, but our political adversaries—want to see the Medicare system withdrawn or destroyed. What do they support? Premium support. What has been accepted in this conference? Premium support.

Some of the supporters of this program claim it's just a demonstration—nothing to get excited about. But it's not a demonstration. Under the terms of the demonstration, 7 million Americans could be forced into the program. Half the States have local areas where senior citizens could be forced to take part in this demonstration.

And that's just today. Tomorrow it will be 10 million senior citizens, or 20 million, or the whole country. People say we can change it. Change it? We will have to pass a law to change it. We will have to come to the Senate and the House of Representatives to change it.

This program will drain healthy seniors from Medicare and leave behind those who are sick and need help the most and it will send premiums for those who remain in traditional Medicare up through the roof. People who support this program make no secret what they want to do. They are on record as saying that Medicare is outdated and should be scrapped and seniors should be forced into HMOs. That is the same philosophy the President embraced when he initially proposed to give senior citizens a drug benefit only if they joined an HMO or PPO. Remember that? That is what this President wanted in March of this year. You only get the prescription drug program if you left the Medicare system and joined. We have carried that view forward with this program. I respect their opinions, but they should not use a prescription drug program as a Trojan horse to foist a bad idea on senior citizens.

The second way this program privatizes and voucherizes Medicare is by providing vast subsidies to the private sector at the expense of Medicare. Payments to the private sector will be 109 percent of the payments to Medicare for the private companies. If we want competition, can someone explain to me why we have to give 109 percent of what we are giving to Medicare to the private companies? Who is paying for those billions of dollars? It is the Medicare population. They have paid in. They are paying in. They are the ones who will pay the 109 percent.

I thought competition was supposed to be an even playing field. Not in this bill. Medicare is at one level; the HMOs are at 109 percent of Medicare. That is what they are getting. Medicare overpays by 16 percent because HMO enrollees are healthier. That is according to the CMS, the governmental institution that reviews these statistics. They find out seniors in private plans are 16 percent healthier than those in traditional Medicare. We ask for a level playing field yet they get 109 percent of what Medicare receives. And the people they are caring for are a good deal healthier than those in Medicare.

It does not stop there. The private plans have an additional \$12 billion slush fund in case they are having difficulty. The 109 percent is not enough. They have a healthier population. But

still, if you need some help, just come my way. We have \$12 billion here with which to reach out and help you.

Medicare will pay at least 25 percent more to insurance companies for every senior citizen who joins an HMO and PPO than it would cost to care for the same person in Medicare. That is competition? That is competition, my friends? That is competition? That is what is in this conference report.

The Medicare trust fund, which today's retirees paid into and rely on, will be robbed to lavish billions of dollars on HMOs. That money, that 25 percent additional premium, ought to be invested right back in terms of the drug program for our seniors.

There is no truer indication of a nation's priorities than the investments it makes. The legislation the Senate considers today squanders that historic opportunity with reckless disregard for the Nation's health.

No provision in the bill reveals its warped priorities more clearly than the \$12 billion slush fund to lure HMOs into Medicare.

Let's see if I have the reasoning behind this fund right. The supporters of this legislation are so convinced HMOs can provide health care to senior citizens more efficiently than Medicare that they have given HMOs a \$12 billion payoff so they can compete. If they are so efficient, why do they need a handout?

I guess the sponsors believe the 9-percent reimbursement bonus HMOs already get is not enough, and that is on top of the 16 percent boost HMOs get from serving a healthier population. It is a good thing HMOs are so efficient or we might have to bleed Medicare completely dry to pay for them.

I wonder which HMO will be the lucky winner for the \$12 billion Government handout. Will it be United Health Group, which made \$1.4 billion last year? Or maybe the \$12 billion lottery winner will be WellPoint, whose profits last year were \$703 million, and whose CEO made \$22.4 million. Perhaps the sponsors of this legislation think he needs a handout to make ends meet.

Anyone who reads the bill and comes to these provisions setting up this slush fund should be sickened at what they see. I challenge the supporters of this legislation to go to a senior center in their State, to go to the coffee shop on Main Street, to go to the churches and explain to the seniors they meet why their Medicare benefits are being stunted to give a \$12 billion handout to HMOs. Explain to them why, with all the Medicare improvements that could be made with \$12 billion, this bill decided the best use of that money is to inflate the profits of an HMO industry that is expected to make \$6 billion this year.

This bill not only undermines Medicare, we find 6 million senior citizens and disabled people on Medicaid—the poorest of the poor—will be worse off. Their out-of-pocket payments will be raised, and their access to drugs could be curtailed.

Two to 3 million people with good employer retiree drug coverage will lose it, according to CBO estimates. This means almost a quarter of all Medicare beneficiaries will be worse off the day this bill passes.

This legislation reimposes the asset test, retreats from the positive things in the Senate bill. Not only does this agreement put all the dreadful things in that harm senior citizens, it unravels Medicare by reimposing the asset test. Three million people who were protected with the Senate bill are cut off in this program.

Finally, this conference puts in place an unrestricted program on health savings accounts, what used to be called medical savings accounts. They provide billions of new tax breaks for the healthy and the wealthy.

The PRESIDING OFFICER. The Senator has consumed all but 2 minutes.

Mr. KENNEDY. Worse, they encourage the healthy and wealthy to take high deductible policies, policies that require you to pay thousands of dollars before you get benefits. That is fine for people who can afford to put money into a tax-free savings account, but it is not good for ordinary working people.

We all know what is going on here. Not a word in this controversy is about prescription drugs for senior citizens. We have an agreement on that. In the Senate we had a solid bipartisan compromise that would have helped millions of seniors pay for the drugs they so desperately need. It was not full coverage, but it was a good start. That is not the issue here. We could send the bipartisan Senate bill to the White House this afternoon. President Bush could sign it before supper. But Republicans will not do that. They are holding prescription drug coverage hostage to their plan to destroy Medicare. They could never pass that plan on its own, so they are adding it to the prescription drug bill. Shame on them.

They say they have to destroy Medicare in order to save it. That is nonsense. There is nothing wrong with Medicare that Republicans can fix.

There is still time to do what is right. Let's stand up for senior citizens and for prescription drug coverage of Medicare. Let's stand up against this conference report and these shameful assaults on Medicare.

I will include at this point the organizations opposed to the Medicare conference report. Included are the National Committee to Preserve Social Security; the Alliance for Retired Americans; Families USA; Medicare Rights Center; Center for Medicare Advocacy; Consumers Union, National Senior Citizens Law Center; NETWORK: A Catholic Social Justice Lobby; American Public Health Association; the American Federation of State, County, and Municipal Employees; the American Federation of Teachers; NEA; Service Employees International Union; AFL-CIO; Older Women's League—there are close to 40

groups here. I ask unanimous consent that list be printed in the RECORD.

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

ORGANIZATIONS OPPOSED TO MEDICARE
CONFERENCE REPORT

National committee to Preserve Social Security and Medicare
Alliance for Retired Americans
Families USA
US Action
Medicare Rights Center
Center for Medicare Advocacy
Consumers Union
National Health Law Program
National Senior Citizens Law Center
New York State Alliance for Retired Americans
Seniors Citizens Law, Albuquerque, NM
Legal Assistance to the Elderly, San Francisco, CA
Medicare Advocacy Project of Greater Boston Legal Services
Connecticut Association of Area Agencies on Aging
PRO Seniors Health Care Consumer Rights Project
NETWORK: A Catholic Social Justice Lobby
American Public Health Association
Arizona Center for Disability Law
Center for Health Care Rights, Los Angeles, CA
Florida Community Health Action Information Network
Florida Legal Services
Human Services Coalition of Miami Dade County
United Food and Commercial Workers
United Auto Workers
American Federation of State, County, and Municipal Employees
American Federation of Teachers
International Association of Fire Fighters
National Education Association
Service Employees International Union
AFL-CIO
International Association of Machinists and Aerospace Workers
International Longshore and Warehouse Union
Transport Workers Union of America
United Steelworkers of America
National Association of Area Agencies on Aging and the Center for Aging Policy
Older Women's League
National Taxpayers Union
United Food and Commercial Workers International Union.

The PRESIDING OFFICER (Mr. CRAPO). The Senator's time has expired.

Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I think Senator CORNYN is seeking recognition.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I came to the floor because I know this is the time that was set aside to talk about the nomination of MG Robert Clark and his promotion to lieutenant general. I want to talk about that in just a moment.

I would say I have been interested in listening to the comments of the Senator from Massachusetts on another topic, on the Medicare conference report that will soon come to the floor. I must confess when that bill was first considered by this body, I could not

support it. It was always my hope that once it went through the conference committee it would be improved. Indeed, from what I know of the bill so far, it has been. But I am so far undecided on how to vote on the conference report.

Mr. DAYTON. Mr. President, will the Senator yield for a question? What is the order of business before the Senate?

The PRESIDING OFFICER. Does the Senator from Texas yield for a question?

Mr. CORNYN. Mr. President, if I can conclude my remarks, then I would be glad to yield for a question in the time that remains.

My concern was about some of the comments made or the characterization made about the bill as being the product of some rightwing agenda. I do note in the announcement I heard, along with the American people, on Saturday, with the majority leader and Chairman CHUCK GRASSLEY of the Senate Finance Committee seated there, and also the Speaker of the House DENNY HASTERT, and others, including the ranking member of the Senate Finance Committee, MAX BAUCUS, who is a Democrat, and JOHN BREAU, the Senator from Louisiana, another Democrat, who both have been leaders on Medicare reform, and what was announced was a bipartisan conference committee agreement on principles.

I do not know how this debate will ultimately pan out, but I do not believe the debate is advanced by, frankly, characterizing it as a product of some conspiracy or captive of some special interest agenda. I do know there are a lot of people who have been active on this issue on both sides of the aisle who support the bill. There are others who express concerns, and I want to explore those in the coming days in deciding how I might ultimately vote.

But, Mr. President, I came to the floor to talk about what I thought was the subject of the day and of this hour, which is the promotion of MG Robert Clark to lieutenant general.

First and foremost, I am well aware of some of the concerns that have been expressed about Major General Clark. I do not believe these concerns are based on any facts, but perhaps sentiment alone.

As we know, as the record reflects, in July 1999, a soldier named PFC Barry Winchell in General Clark's division was murdered by a fellow soldier at Fort Campbell in Kentucky. It is alleged this young man was murdered because he was perceived to be a homosexual.

I am sure I speak for the entire Senate when I say such inhumane acts deserve every condemnation. My heart, and that of others, goes out to the friends and family of Barry Winchell as they mourn his untimely demise.

The perpetrators of this heinous crime were, however, punished to the fullest extent of the law. As the convening authority for the court-martial,

Major General Clark played a key role in ensuring the people who savagely killed Private First Class Winchell were, in fact, brought to justice.

Unfortunately, there are those who want to unfairly blame major General Clark for this tragic death.

This is a very serious charge and should not be made lightly. I commend Chairman WARNER for his excellent work in making sure that this nomination has been carefully considered by the Senate Armed Services Committee. In fact, the committee spent more than a year looking into this tragic situation so that we could make sure we knew everything that could be known about the facts and circumstances involving Private First Class Winchell's death and any alleged culpability or responsibility that General Clark might bear for this tragedy.

This is what we learned. The Department of the Army inspector general conducted a full investigation into the facts and circumstances of the death of Private First Class Winchell at Major General Clark's request. The inspector general also conducted an overall command climate assessment at Fort Campbell which, as Chairman WARNER pointed out, consisted of, at the time, about 25,000 soldiers. Neither the investigation nor the command climate assessment found that Major General Clark was in any way responsible for this sad event. The record, in fact, demonstrates that General Clark conducted himself as a consummate professional, before and after the homicide. He adopted enhanced unit level training programs to ensure that Department of Defense policy was understood and implemented. And he repeatedly took personal action to communicate the requirements of the proper conduct and respect each soldier deserves.

The murder of Barry Winchell was indeed a tragedy. But it would be wrong to allow the career of a great American soldier to be ended over false allegations of some vague perceived shortcomings, when it is clear that he joins all of us in condemning the despicable actions of the drunken soldier that took Barry Winchell's life.

General Clark is more than worthy of promotion to lieutenant general. A San Antonio native, General Clark is a graduate of Texas Tech University and, like many brave Texans, he chose to serve his country in a military career. In fact, 1 out of every 10 men and women in uniform today is from the State of Texas, something of which we are immensely proud. What a career General Clark has had, spanning more than three decades on as many continents. Among other decorations, General Clark has received the Distinguished Service Medal, the Legion of Merit with four Oak Leaf Clusters, the Bronze Star for Valor, and the Bronze Star with Oak Leaf Cluster for his service.

To my mind, these achievements alone would merit his promotion. His

record demonstrates that he has been a fine officer and, indeed, a great American patriot.

But there is also this: When Major General Clark was only First Lieutenant Clark, barely a year in uniform, he was serving in Vietnam as the first platoon leader of Company A, the Second Battalion of the 8th Cavalry, the 1st Cavalry Division. As his men were being extracted from hostile territory following a ground reconnaissance mission, they were engaged by enemy mortar fire, and the first two rounds caused heavy casualties, including Lieutenant Clark. A lesser soldier might have faltered in this situation, but even though he was wounded, Lieutenant Clark did not forget his foremost duty was to his own men. With total disregard for his personal safety, for his wounds, Lieutenant Clark put himself in the line of mortar fire again to carry wounded members of his company out of harm's way. He bravely moved from position to position, urging his men on until help arrived.

For his wounds, Lieutenant Clark was awarded the Purple Heart; for his valor, the Bronze Star.

General Clark has literally bled for his country. He has put his life on the line for his men and, yes, for us. He has dedicated himself to defending American freedoms against all enemies. In short, he is a true American patriot.

There are brave young men and women who today are doing exactly the same thing that General Clark was doing then: fighting for the cause of freedom and democracy in the ongoing war on terror. They are serving a just cause with bravery and dedication. I can think of no better leader than Major General Clark to serve as a living example to them, the next generation of American heroes.

I yield back any remaining time to the Senator from Alabama.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I think the Senator from Minnesota is to be recognized next. Is there a time agreement, to clarify my own understanding?

The PRESIDING OFFICER. The Senator from Alabama controls 29 minutes at this point. The minority controls almost 20 minutes.

Mr. SESSIONS. I thank the Chair.

The PRESIDING OFFICER. Under the agreement, 15 of the minority's 20 minutes is pledged to the Senator from Minnesota.

Mr. SESSIONS. I see. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. I thank my colleague from Alabama. I had not intended to interrupt my distinguished colleague from Texas with whom I have traveled to Iraq and other places, but I misunderstood exactly where we were, given the subject matter that was being discussed. I apologize for the interruption. I will focus my remarks

on this matter because it is one that is deserving of all the attention and concern of the Members of this body, and it is a very difficult matter, one that I wish we didn't have to confront in this Chamber and one I wish we didn't have to confront in this country.

But we do. We have a general with, generally, a very distinguished record, who now has been nominated for promotion to a very high office, commanding general of the Fifth Army. I have the greatest respect for the top echelon of our military command, as I have come to watch them, work with them, see their dedication and their professionalism and their compassion and concern for the men and women under their command. I regret having to raise these questions about any one of them.

But we have a dead American soldier on the other hand, a young man who lost his life while in uniform, while in the service of his country. He wasn't murdered in Iraq, as some of our brave soldiers are these days, or in Afghanistan, or somewhere else. He wasn't in a training accident, as some soldiers from Minnesota have been, in this country or abroad.

He was murdered. He was murdered by his own fellow American soldiers. His crime? His crime was that he was perceived and believed to be gay. I use that word "crime" rhetorically because I don't believe—I don't think Americans believe—that the sexual preference of an individual is a crime or should be a crime. It is not a crime in this country, punishable by death.

That can only happen in a country such as Iraq, or some country with a vicious totalitarian regime, where if someone is different in any way and somebody decides it is wrong, they are not only excluded by society or discriminated against, but they are harassed, tortured, or executed. But not in the United States of America.

However, it happened in this country at Fort Campbell, KY, in 1999, under General Clark's command. The soldiers who committed that terrible crime have been prosecuted, convicted, and are serving sentences.

The military system that allowed that atrocity to occur remains. It is a system which permitted a succession of actions—from taunts, humiliations, bullying, all sorts of prejudice, immoral and illegal behavior—to occur and recur. What happened as a consequence? Nothing. Nothing. Nothing, unfortunately, is what happens most of the time in the Army of this country today.

I am very proud of that Army in many respects, but I am not proud of an Army, or any other institution in this country, that permits discrimination against men and women because of their sexual preference. It is just that nothing usually happens when young women are assaulted and raped at the Air Force Academy—another matter we are dealing with on the Armed Services Committee. Their "crime" is that they are women.

Women have been admitted to the Air Force Academy for 30 years and have been flying side by side in airplanes, and taking all of the risks, and doing as well as their counterparts. But they are being assaulted and raped time after time. We have discovered that at the Air Force Academy, what has usually happened to the perpetrators of those crimes is very little or nothing.

These are impressionable young men and women in our Armed Forces—most of them. They are outstanding young men and women. I have interviewed a number of them. I think all of us have that responsibility. I find, when I have the opportunity to interview young men and women who are seeking admission to or nomination to our military academies, that they are really fine young men and women. There is a lot of competition to get in. When I have those interviews, when I am talking to other young men and women in uniform as I travel back and forth, I don't see these kinds of attitudes. I don't see young men and women who are looking at their fellow soldiers with this kind of prejudice or are considering these kinds of atrocities.

I just visited, in Minnesota over the weekend, a soldier who had one side of his arm shredded while serving in the Iraqi theater. He is recovering, thank God. He is a 21-year-old young man. He will recover. Another young Minnesotan lost most of his right leg, but he has great spirit and morale and he will live a great life.

But I have also visited parents of young men and women who are not recovering, who are not coming home because they paid the ultimate price for their service. I am on the Armed Services Committee, and when I look at the reports and the casualty figures of the brave young Americans who are being injured or wounded or maimed or who died in combat, I don't see categories of "heterosexual" or "gay" or "lesbian" and I don't see "women" or "men." I see American soldiers, with the same kind of blood and bodies. All they are asking is an equal opportunity to serve their country, to risk their lives in the service of their country—even to die in the service of their country.

Amazingly enough, that is what these young women who are going to the Air Force Academy, and the young men and women entering the Armed Forces, who have a same-sex affinity—that is what they want, the same opportunity to fight, to be heroic, and even to die for their country.

That is what makes it so inexplicable and inexcusable and unforgivable when they are discriminated against, when they are treated the way they are, and when they have nowhere to turn.

So who is responsible? Who is accountable? Who loses a rank or a promotion or a star because a gay soldier was murdered under his command? General Clark's actions following that atrocity were questionable and, I would

say, barely marginal. General Clark's actions in many other instances throughout his distinguished career have been extraordinary, heroic, and commendable, and I salute him for them. But it wasn't only his actions after this atrocity that were called into question; it was the actions and inaction before this occurred, which permitted in this environment of opportunities for repeated discrimination and harassment—for an NCO who was clearly unfit to be responsible for impressionable young men who, by his own conduct—or misconduct—showed them how not to treat a fellow soldier. That is what concerns me about this today.

I expect we will confirm General Clark's promotion. He will go on, and I hope he performs with great distinction, as I believe he will, as a commanding general of the 5th Army. But what is going to happen to all the other gay and lesbian soldiers out there? What kind of message are we sending to them? What kind of message do we send to the young women who get raped at the Air Force Academy when they see those who commit the terrible acts being promoted? What happens to a military's network of people when those promotions occur untouched by these kinds of atrocities, and eventually they are the military command or they are throughout the military command? How are we ever going to change what is going on in these situations if no one is held accountable, if there is no consequence for not doing what a commander should do—what in some instances they are required by law to do?

Regardless, common sense and decency and morality would tell them that anybody responsible for the lives of young people ought to keep people from ganging up or abusing or assaulting or picking on or murdering a fellow human being—not to mention a fellow soldier but a fellow American citizen. What happens to all of us when we let that go on?

As I said earlier, I think the U.S. military is outstanding in so many respects. It is that institution where, historically, young men and women have been able to come from all over the country, all different backgrounds; it is the great opportunity provider. It doesn't matter if your parents don't have any money or if you don't have much education; you can find yourself and become somebody and either serve with great distinction and make it a career or you can come back into society and do just as well. But you are not going to be that kind of person or that kind of professional or that kind of citizen or leader of this country if you are learning that is what happens, and that is OK, and those who do it get promoted, and those who are the victims suffer the terrible consequences.

That is a terribly destructive message to those individuals, a terribly destructive result to our Nation; and if this body means the concerns it ex-

pressed here—and I take them at good faith, but if we mean that, we are not going to be satisfied, and we should not be, by doing nothing other than promoting this general today.

We owe it to those men and women who have suffered, and those who have lost their lives through these atrocities, to take responsibility and tell the military, because we are the civilian command, that we are not going to do it; the buck stops here because no one else will, that we are going to insist on an armed forces that reflects, represents, and defends the standards of the basic decency the founding principles of this country that all men and women are created equal, they are endowed by their Creator with certain unalienable rights, that among them are life, liberty, and the pursuit of happiness, and the right to defend their country and be a patriot and not have somebody attacking them, humiliating them, or murdering them because of who they are.

That is the responsibility of leadership. That starts at the top, all the way down. It does not come from the bottom because that is where the base level is. It has to come from the top, from the commanders, from the civilians who are responsible for the system which they command and for those who are putting their lives, their hopes, their dreams, and their careers on the line. We have a lot of work to do.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I yield to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank the Senator from Alabama for yielding me a few minutes to discuss the nomination of GEN Robert Clark. I rise in support of the nomination. This is a very sensitive issue and it is one that needs to be dealt with in the right way by this body, and I think it has been.

The tragic death of PVT Barry Winchell should never have occurred, nor should any murder of that sort. The fact is, once it did occur, General Clark did everything within his power, first, to see that justice was done.

During the course of seeing that justice was done, there was a review of all of his procedures and regulations that were in place at Fort Campbell relative to the circumstances that led up to this unfortunate death. General Clark was somewhat handicapped by not being able to speak out openly and publicly after the death because he was a convening authority for the court-martial and therefore he could not really come forward and have a whole lot to say about the facts and circumstances leading up to the death of Private Winchell.

The fact is that he did make some changes in the procedures. He did make sure other regulations that had been in place prior to this unfortunate death

were enforced to an even greater degree than at the time this incident occurred.

It is truly a tragic situation that was of great concern to General Clark. I have had the opportunity to visit with him on a couple of different occasions, and one does not have to talk with him very long to see the concern in his eyes and in his heart relative to the death of Private Winchell.

I have also had the opportunity to meet with Private Winchell's parents. Again, we expressed to them deep sorrow and that our prayers go out to them. No matter what, we cannot bring their son back. I think we do need to make sure that as we move through this process we review what was done relative to the facts and circumstances leading up to this terrible murder and the facts and circumstances as they occurred after the death of Private Winchell.

As I reviewed this situation with General Clark and as I looked at the IG investigation that he ordered to take place after the death occurred and after the court-martial was completed, it is pretty obvious that he did everything he could have done to ensure that justice was done and that the atmosphere surrounding the troops at Fort Campbell was not poisoned and everybody was treated in an equal and fair manner.

It is very unfortunate that this situation had to occur, but at the same time it is very important that we make sure the procedures of the Army are followed very closely, and they were. It is very important that we make sure the sensitivity directed towards the family has taken place, and I believe it has. It has not been a perfect situation. General Clark, just as any officer or any individual in the corporate structure of any company in America, can look back on a situation as tragic as this and say that maybe they should have done something a little bit differently. The fact is, General Clark has always provided strong leadership during his career in the U.S. Army, and I think, once again, he exhibited strong leadership.

He did everything within his power to see that justice was done and to see that appropriate rules and regulations were put in place where they needed to be and that they were carried out to the highest degree. So I rise in support of GEN Clark, and I hope my colleagues will see fit to confirm his nomination.

I yield the floor.

Mr. LAUTENBERG. Mr. President, I will vote against the nomination of Major General Robert T. Clark to the rank of Lieutenant General and to the position of Commander, United States Fifth Army.

Former President Harry Truman placed a sign on his desk in the Oval Office that read "The Buck Stops Here." As Commander in Chief of the United States Armed Services, President Truman took full responsibility

for every action that took place under his watch, at every rank. He never shifted blame, and he never accepted failure.

The same, cannot be said for General Clark.

In 1999, while General Clark was the commanding officer at Fort Campbell in Kentucky, Private First Class Barry Winchell was bludgeoned to death with a baseball bat by a fellow soldier who believed that Private Winchell was gay.

Did General Clark immediately accept responsibility for this terrible incident? Did he use his position of authority to stamp out the hateful and dangerous climate of anti-gay sentiment on the base?

No, he did not. Instead, General Clark claimed that there wasn't anything wrong on his base, denying that a vile culture of hate and harassment against gays had been pervasive for some time. But his sentiments do not jibe with reports from soldiers at the base detailing widespread harassment of soldiers thought to be homosexual and the ubiquitous presence of anti-gay graffiti.

The hazing and harassment that Private Winchell experienced before his murder were so pernicious that he bravely reported these episodes to the inspector general. This was a very risky course of action because it could have led to Private Winchell's discharge under the "Don't Ask, Don't Tell" policy.

On his departure from Fort Campbell, General Clark declared, "There is not, nor has there ever been during my time here, a climate of homophobia on post." Tell that to Barry Winchell's family.

Apparently, the buck did not stop with General Clark. Instead of addressing the problem of homophobia at Fort Campbell, General Clark ignored it. Immediately after Private Winchell's murder, General Clark remained silent. He did not condemn anti-gay behavior on his base. He refused to meet with gay rights organizations who simply wanted to address the homophobia prevalent there. Surprisingly, General Clark failed to request the psychological and training services provided by the Army on how to address anti-gay harassment after the murder.

General Clark even delayed meeting with Private Winchell's family—despite their repeated entreaties—for almost 4 years after his murder. I find this particularly inexplicable and inexcusable.

The tragic murder of Private Winchell was not the only problem occurring at Fort Campbell. According to an Inspector General review of the base, Fort Campbell suffered from low morale, dilapidated barracks in need of repair, inadequate health care, and significant problems with underage drinking.

Today, the Senate faces the decision whether to promote General Clark to a very high-ranking position in the U.S.

military. This position requires proven leadership skills.

I do not think that General Clark showed leadership at Fort Campbell, either before or after Private Winchell was murdered. He let Private Winchell down. He passed the buck.

I rise today to say that General Clark's lack of leadership at Fort Campbell dissuade me from supporting his promotion. I believe this promotion sends the wrong message about what we expect from our commanding officers, especially now in a time of war.

I served in the Army Signal Corps in Europe during World War II. Over the course of my three years of service, I never encountered a superior officer who avoided responsibility for his soldiers or their actions. Each and every one of my commanding officers expected and demanded the best from me; their leadership, in turn, inspired me to do my best.

I don't think Major General Clark inspires such dedication and service. Therefore, I will vote against this nomination and urge my colleagues to do the same.

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

• Mr. KERRY. Mr. President, I oppose the nomination of MG Robert T. Clark to the rank of lieutenant general. The facts surrounding his conduct, prior to and after the murder of PFC Barry Winchell, raise questions about his leadership and judgment that have not been answered to my satisfaction.

The Inspector General of the Army, while clearing Major General Clark of fostering a hostile environment at Fort Campbell, raised serious issues about discipline at the base. Furthermore, some of Major General Clark's actions after Private Winchell's murder raise legitimate questions about his fitness for higher command. In the immediate aftermath of the murder, for example, a public affairs officer at the base issued a statement describing the murder as a "physical altercation in a post barracks." This gross distortion of the facts was not corrected. In fact, Private Winchell had been asleep at the time his murderer struck, goaded on by other soldiers. General Clark took no steps to correct this claim in public, and later defended his action as in keeping with his mandate not to prejudice the ongoing investigation. Regrettably, these actions leave the appearance of a general officer who did not want the negative attention that would result from a hate crime under his command.

General Officers are rightly held to incredibly high standards of conduct, and they should be. The men and women under their command are worthy of no less. In this case, Major General Clark appears to have come up short, as evidenced by the Senate Armed Services Committee's failure to pass this nomination unanimously. Instead of clarity, the nomination process has left us with lingering concerns

about the general's fitness for higher command.

Mr. President, I recognize and appreciate Major General Clark's long service in the Armed Forces of our country. But there remain too many legitimate questions about his leadership and judgment stemming from his command of the 101st Airborne at the time of Private Winchell's murder to confirm his nomination to the rank of lieutenant general.●

Mr. FEINGOLD. Mr. President, I want to speak today on the nomination for promotion of Major General Robert T. Clark and the broader issue of the Department of Defense's "Don't Ask, Don't Tell" policy. The unusually lengthy and controversial nomination of General Clark has, once again, brought attention to the failure of the Pentagon's policy towards gay servicemembers. It is high time that we stop this policy of codified discrimination against our brave servicemen and women who happen to be gay.

I fear that this policy may have been a contributing factor in the June 5, 1999, brutal murder of PVT Barry Winchell at Fort Campbell, KY, a base commanded by General Clark. I will not reiterate the facts of that case at this time, but I will say that there are strong indications that there was a pervasive and hostile anti-gay climate at Fort Campbell both before and after the tragic murder of Private Winchell and that the base leadership, including General Clark, appears to have done little, if anything, to address it.

Mr. President, the "Don't Ask, Don't Tell" policy has failed. It failed to give Private Winchell useful options to combat the harassment he faced during the months prior to his murder. It failed to force General Clark to take effective action to eliminate the anti-gay climate at Fort Campbell. And it continues to fail to stop the discrimination and harassment faced by our brave gay servicemembers.

I want to take this opportunity to urge the Pentagon to begin instituting changes to its policy towards gay servicemembers. The Pentagon should provide, at a minimum, a safe place for gay and lesbian servicemembers to report harassment without fear that they will be kicked out of the military because of their sexual orientation. This modest step would be one small way to honor the memory of Private Winchell and to prevent what happened to him from ever happening again.

Mr. AKAKA. Mr. President, I rise today to discuss the promotion of Major General Robert T. Clark to Lieutenant General in the United States Army, which is pending consideration by the Senate. On October 23, 2003, the Senate Committee on Armed Services voted to favorably report General Clark's promotion for consideration by the Senate. The vote taken was a voice vote. I asked, however, that the record reflect that had there been a recorded vote, I would have voted to oppose this promotion.

I have deep respect and admiration for our military leaders. I have often said that anyone who achieves the rank of a flag or general officer deserves a Ph.D. for the amount of education and training they have successfully completed to attain such distinguished rank. In my capacity as a member of the Senate Armed Services Committee and the co-chair of the Senate Army Caucus, I have had the privilege of working with many of our Nation's most respected military leaders.

This has been a difficult decision for me. General Clark's promotion has been pending consideration before the Senate Armed Services Committee for 14 months. Military promotions are usually very simple to consider, and are rarely troublesome or controversial. I normally do not hear from my constituency about a military promotion. In this case, however, I was contacted by a number of my constituents asking me to oppose General Clark's promotion, primarily for his actions as Commanding General of the 101st Airborne Division at Fort Campbell, KY, during a difficult time when PFC Barry Winchell was murdered. For this reason, I made sure that I had the opportunity to review as much material as possible pertaining to General Clark's career as well as the facts surrounding the incident that led to Private First Class Winchell's death.

In March 2003, I joined some of my colleagues in writing a letter to the distinguished chairman and ranking member of the Senate Armed Services Committee to request information regarding the specific actions General Clark took to eliminate the climate of anti-gay harassment that existed at Fort Campbell prior to Private First Class Winchell's death; statements General Clark made regarding antigay harassment to officers, soldiers, and the public; the policies he promulgated addressing this issue; other steps he took to prevent further acts of violence and harassment; how he handled the Winchell case in comparison to other serious crimes occurring during his command; and his response, as well as the response of those around him, to requests by Private First Class Winchell's family to meet with him. I reviewed the information provided and participated in an executive session held on October 23, 2003, where General Clark was available for questions.

After reviewing all of the information and listening to General Clark's testimony, I decided that I could not support his promotion to Lieutenant General. General Clark's professional record reflects many distinguished accomplishments as a military officer. However, I remain concerned about his lack of what I believe to be leadership qualities that are necessary for today's military leaders.

I remain disturbed by General Clark's continued reliance on lack of knowledge regarding misconduct and antigay harassment on post as a rationale for his lack of action. General

Clark had been in command of the 101st Airborne Division for 17 months prior to Private First Class Winchell's death. While I understand a commanding general is not responsible for the individual actions of his soldiers, I firmly believe that a commanding general sets the tone on an installation and can influence what his soldiers believe will be considered "acceptable" behavior. I was disturbed to learn of repeated instances of underage drinking and harassment, and of the assessment, particularly of those soldiers in Private First Class Winchell's unit, of the command climate prior to Private First Class Winchell's death.

I am also disturbed by General Clark's refusal to take responsibility for the incident. During his tenure as Chief of Staff of the Army, General Eric Shinseki took responsibility for what happened to Private First Class Winchell. This reflects official Army policy that commanders at all levels are accountable for everything their command does or fails to do. As a leader, I believe General Clark should have taken responsibility or expressed accountability for the circumstances that led to this Private First Class Winchell's death.

I believe his failure to initiate a meeting with Private First Class Winchell's family reflects poor leadership on his part. His position as convening authority did not prevent him from meeting with the parents of a soldier murdered on an installation over which he had command and responsibility.

Again, General Clark's record reflects that he has led a distinguished military career. However, I do not believe his actions as the Commanding General of the 101st Airborne Division at Fort Campbell, KY, warrant his promotion to lieutenant general.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this has been a very difficult nomination for the Armed Services Committee. We worked very hard for over a year to ensure that we developed all of the relevant facts so we could make an informed decision. In fact, this nomination was first sent to the Congress in the last session and then was resubmitted in this session.

It is totally appropriate that we took this time to address Major General Clark's nomination because PFC Barry Winchell, a soldier serving in Major General Clark's command at Fort Campbell, was brutally murdered by another soldier on July 5, 1999.

Fort Campbell is a large fort, perhaps 25,000 soldiers and 46,000 family members. We were interested in what the command climate was in Major General Clark's command, particularly as it related to his command's implementation of the Department's Homosexual Conduct Policy. We also wanted to see how Major General Clark responded after the murder.

Major General Clark asked the Army Inspector General to conduct an investigation into the facts and circumstances surrounding the murder. The Inspector General conducted this investigation and also conducted an assessment of the command climate at Fort Campbell before the murder. Neither the investigation nor the command climate assessment found fault with Major General Clark's actions.

We met with Private Winchell's family. We met with Major General Clark on a number of occasions. We met with other Army officials. We met with organizations and individuals who expressed an interest in this nomination. So under Senator WARNER's leadership, I believe our committee has given full consideration to the nomination of Major General Clark and the events which have to be described as tragic when considering that nomination.

Every one of us, every human being who has knowledge of this incident, is appalled by the brutal murder of a soldier sleeping in his barracks. So we first wanted to look at, again, the incident and the command climate prior to the incident. We reviewed the Inspector General's report that stated that the chain of command, from commanding general through company leaders, responded appropriately to matters with respect to the enforcement of the Department of Defense Homosexual Conduct Policy.

One of the most difficult issues had to do with the statement of Private Winchell's family that they requested a personal meeting with Major General Clark and they did not receive a personal meeting with him.

I think the fact they made that request and it was not complied with was troubling to all of us. As we dug into it, we heard from Major General Clark on this issue. He looked us in the eye and said he never received such a request. That is not to say the request was not made. It is to say that I think most of us believed Major General Clark when he said that request was never forwarded to him. What happened to that request we do not know, and perhaps nobody ever will know.

Major General Clark wrote a letter to the family. It was a heartfelt letter. It was a personal letter about the death of their son. It was really a comment that he added in that letter, which was so personal and so heartfelt, that I think persuaded many of us that he was honest when he stated that there is no way he would not respond to a family request to meet with him.

As others have mentioned, he did have a special responsibility, as the General Court-Martial Convening Authority, to ensure that justice was done and to make sure nothing he would say would in any way create error in that trial.

The murderer, PVT Calvin Glover, was convicted of premeditated murder by the court-martial, which was convened by Major General Clark. He was sentenced to life imprisonment and, of

course, a dishonorable discharge from the Army.

Another soldier was convicted of obstruction of justice and making a false official statement and was sentenced to 12½ years confinement and a dishonorable discharge.

To the extent that justice can ever be done following a brutal murder of this kind, justice was done in this case. It was done under the leadership of the convening authority, Major General Clark himself.

In the end, looking at all the information that is available to us, I have concluded that we should confirm this nomination and that it would be appropriate, at the same time, however, for us to take note of the events relative to this nomination, that surround it, the length of time this nomination has been pending, all of the inquiries and investigations and reports which have been requested, and hope all of this together will lead to a different environment and a different climate in the unit at issue here.

I ask for 1 additional minute, if I may, from the majority side.

Mr. SESSIONS. The Senator can use that from the majority side.

The PRESIDING OFFICER. The Senator may proceed.

Mr. LEVIN. I thank the Senator from Alabama.

When we put all this together, the hope, I think of all of us, is that the kind of climate that apparently existed in that one unit, not known to Major General Clark—because the Inspector General found no evidence that he knew of any anti-gay climate in any of the units, much less that one. There was in one unit some anti-gay rhetoric which was immediately responded to by the captain in charge of that unit. As a matter of fact, the captain counseled the noncommissioned officer and put an immediate end to the anti-gay rhetoric. But that was not known to General Clark.

For all these reasons, I think it is appropriate we now confirm this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator LEVIN for his work on this issue, and Senator WARNER's efforts as the Chairman. Senator LEVIN and Senator WARNER have discussed this issue in great detail. Senator WARNER made clear he was going to take it seriously, that there would be ample opportunity to evaluate any questions that arose from these terrible circumstances, and that the facts would come out in committee and could be presented forthwith. That was done. We heard all of the information that was available. I would note it is time, now, to move forward.

General Clark's nomination has been blocked for over a year now. He is a tremendously fine soldier. He is just not the one responsible here. I also should note that I do not think it is

correct, as some have indicated, to say people who fail to adhere to DOD policy get promoted. General Clark acted aggressively against the climate and the actions that resulted in this terrible murder.

In July of 1999, PVT Barry Winchell was a member of the 502nd Infantry Regiment. He was murdered in his bed as a result of a brutal assault by another private, Calvin Glover. Before his death, Winchell had been perceived as gay by Private Glover, and Winchell had complained about harassment in his company to superiors.

I should note that there was evidence that a platoon sergeant had made insensitive comments about gays, but there was not evidence of command responsibility in any way.

In December of 1999, after General Clark convened a court-martial and a trial was conducted, Private Glover was convicted of first-degree premeditated murder and was given life without parole. The individual who was Private Glover's buddy, who obstructed the investigation to some degree, was given 12 years in jail, without parole. He is serving that time.

I know the Chair has served as a lawyer and clerk to Federal judges. General Clark was the convening authority for a general court-martial. He was the superior commander on a base with 25,000 people. We don't hold mayors responsible for crimes committed in cities of 25,000 people. In fact, one of the highest crime rates in America is among young males. So, what we have in this base is 25,000 of the kind of people who, statistically, tend to get in more fights, more crimes, and commit more murders than anyone else. That is my experience as a prosecutor. I think it is indisputable that that is so.

So it is therefore not possible for a commander of a 25,000 member facility or military base, to guarantee there are not going to be fights and even murders every now and then. Heaven help us, that they occur, and the climate ought to be set in a way that minimizes that. But we cannot hold every commander responsible for this, any more than we could hold a mayor responsible for a crime in a city.

But what I wish to emphasize is that the general took a number of direct and dramatic actions to indicate, without question, his revulsion with this murder. He clearly stated his expectation that everybody at Fort Campbell would be treated with respect, and that violence of this kind is unacceptable. He was quite strong on that point.

However, he was unfairly criticized for his actions following Private Winchell's death. The criticism was unfair because in the military he is the convening authority of the courts-martial. He is required, by the Uniformed Code of Military Justice to appoint the members of the courts-martial, and he has a duty to remain objective. He has to be careful that he does not conduct himself in a way that prejudices the officers he appointed to try the case.

I served as a JAG officer for several years in the Army Reserve. I know a commanding officer has to be careful because the defense lawyers who defend soldiers charged with crimes can raise, as a defense to the trial, that the commander had prejudiced the trial by suggesting the defendant was guilty before he had a trial.

General Clark testified at his confirmation hearing in the Senate Armed Services Committee that he was in regular contact with his staff judge advocate, his lawyer, advising him what he could say, and what he could not say.

Some say he should have been more open, he should have been more condemning of this act, he should have been more aggressive. It is clear that he was acting under the legal direction of his staff judge advocate. In fact, his staff judge advocate was talking to the staff judge advocate in Washington, for the Department of Defense. They exhausted every means possible to ensure they conducted themselves properly. They sought to ensure that the trial was fairly conducted, and that if a conviction was obtained, as it was obtained, that the verdict would be upheld. It was.

I just would want to say this is not so easy, as some would suggest, for him to be really aggressive in making comments about this while a trial is ongoing.

Complaints were certainly made about his conduct afterwards. General Clark, who, if you met him, you would understand, is a man of great integrity, great decency, who wants to do the right thing, said: Look, I haven't done anything wrong. I believe I have conducted myself properly. But I am personally requesting that the inspector general investigate my conduct and my actions. I want him to come in here and investigate this situation to see if I have done anything wrong.

Of course, the IG did investigate. An IG team conducted a thorough investigation into the command climate at Fort Campbell. This investigation of the command climate found that Major General Clark was not culpable of any dereliction or failure of leadership, as has been alleged by the Service Members Legal Defense Network—SLDN—which is an advocacy group that works to protect and ensure that homosexual soldiers are treated fairly in the military, as they have every right to be treated. They have a right to insist that they be treated fairly.

It is important that people know about this crime. I know it is important that people understand how civilization sometimes is fragile and people lose discipline and do things they should never ever do.

To highlight the problem that occurred at Fort Campbell, and to take action by an advocacy group—or by the military or any decent people, or for the Senate to take action in order to ensure that these kinds of things don't happen in future—there is no illegitimacy in that.

One of the things that has troubled me in recent years in this Senate is that we feed on information that is sometimes provided by people who have an agenda. As a result of that, sometimes people are unfairly treated. Everybody deserves fair treatment. This private who was murdered did not deserve what happened to him. I also believe General Clark does not deserve some of the charges that have been made against him.

A few other points; This group claims that Major General Clark failed to follow Federal law. There is no proof of that. There is no proof that he failed to provide a safe environment for soldiers—in fact, that claim has been rejected. They claim that he failed to exhibit leadership necessary for further promotion. After the inspector general's reviews were done, that proved not to be so.

The allegations were that Major General Clark had allowed "significant levels of antigay harassment under [his] command," and that it allowed a command climate in which "antigay harassment flourished"; it was just not true. The Army IG found sporadic incidents of the use of derogatory or offensive cadence calls used during marching. These problems which were quickly corrected and stopped as soon as they were discovered. It was clearly established that anti-homosexual comments were not the norm at Fort Campbell.

There were allegations that there was anti-gay graffiti in the public areas around Fort Campbell. The Army inspector general found one latrine at a unit level and one in a public recreation center at Fort Campbell which had anti-gay comments on them. This was clearly not a common thing on the base. I suspect you would find these comments in some of the public bathrooms in cities and gas stations around America. It is wrong, but I don't think that should be something the general would be found to be responsible for. There is simply no way that he can protect against each and every one of those incidents.

It was suggested that he took no action to deal with this problem. I have one document dated November 30, 1999—not long after the incident that occurred—in which General Clark wrote his command. He sent it to everyone basically on the base.

Distribution A, Subject: Respect for all soldiers.

Paragraph 1: The soldiers in the Army today are the best we have ever had.

I certainly agree with that.

They are volunteers who merit our respect and they deserve to be treated with dignity in a climate of safety and security.

He goes on to say:

We can and will do more to ensure that our soldiers are treated with dignity and respect. I accordingly direct that:

All soldiers be briefed on the Department of Defense homosexual conduct policy upon their formal in-processing at Fort Campbell. When they come to the base.

They are to be instructed on this policy of treating people fairly and with respect. As an interim measure, every soldier at Fort Campbell will receive the briefing.

In addition, he goes on to note:

This instruction will also include the contents of the 25 October 1999 memorandum from the commanding general . . .

And another memorandum—both of which reiterate the roles and responsibilities of commanders regarding investigations of threats against or harassment of soldiers on the basis of alleged homosexuality;

Subparagraph (c): All leaders will vigorously police the contents of run and march cadences.

They have always been a little bit risque over the years. But the general took aggressive action here.

They will monitor the march and run cadences to ensure that they are positive and devoid of profanity or phrases demeaning to others.

Subparagraph (d): All leaders will vigorously police the content of training briefings, classes, lectures, and all other instructions to ensure that they are devoid of profanity or phrases demeaning to others.

Subparagraph (3) Respect for others is an Army value and a cornerstone of the discipline and esprit de corps and all soldiers will be treated with dignity and respect. Accordingly, I expect all Department of Defense, Department of Army and Fort Campbell directives, policies and regulations to be enforced by our leaders and adhered to by our soldiers.

Robert C. Clark, General.

This is a superb soldier who served his country well in Vietnam. He was awarded the Purple Heart and the Bronze Star. He was wounded in combat and refused to be evacuated until he got others out of the line of fire.

He commanded the 3rd Brigade of the 101st Airborne Division, that great division, during Operation Desert Storm, the last Gulf War. His proven leadership is clear.

In the U.S. Army Command and General Staff College "Story of the Third Army in Desert Storm" by Richard Swain, published in 1994, he talks about how General Clark's brigade moved rapidly to cut off the retreat of the Iraqi soldiers, facing tremendously bad weather. It was so bad that motorcycle troops were mired down, but he moved successfully anyway and seized the objective before other units were able to.

He is a proven commander in combat. He is a proven commander in the peacetime Army. He has taken strong action to see that this kind of activity never happens again.

I am proud of him. I am also proud to note that he obtained his master's degree at Auburn University, one of America's great universities. I had occasion to meet him and to see him testify at hearings. I thought he did a superb job. There was little doubt of his sincerity in this matter and his capability to be a great general officer.

I thank the President.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The majority leader.

Mr. FRIST. Mr. President, I congratulate my colleague, Senator SESSIONS, for really putting into perspective a lot of the things that have been said on the floor, allegations from the past but also with respect for this man who is a true hero, an American hero.

I rise to support his elevation to the second highest rank in the U.S. Army as Commander of U.S. Army at Fort Sam Houston.

On October 3, 1971, this young man, Robert E. Clark, first platoon leader of Company A, 2nd Battalion, 8th Cavalry of the 1st Cavalry Division, became an American hero.

It was approximately 10:30 a.m. in Bin Tuy Province of the Republic of Vietnam. Company A was completing a reconnaissance mission. As they were being extracted, the men came under heavy fire. The first two enemy mortar rounds struck hard and inflicted heavy casualties, including wounding First Lieutenant Clark. At that time, at great risk to his own personal safety, and ignoring or at least putting aside his own wounds, First Lieutenant Clark ran forward into enemy fire to carry his fellow wounded soldiers back to cover.

Throughout the battle he pressed on, moving from position to position to direct his men to lay down a constant stream of smoke in order to mark their position for the helicopters flying overhead. The record clearly shows First Lieutenant Clark's heroic action ensured the success of Company A's mission. For his bravery in combat and service in Vietnam, First Lieutenant Clark received a Purple Heart. He received two Bronze Stars, one for valor and one for service.

In a letter of recommendation on behalf of Robert Clark, the company commander wrote:

[First Lt Clark's] display of personal bravery and devotion to duty were in keeping with the highest traditions of the military service, and reflect great credit upon himself, his unit, and the United States Army.

I ask unanimous consent to have printed in the RECORD a copy of the letter of recommendation which lays out these events.

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

On 3 October 1971, first Lieutenant Robert T. Clark, First Platoon Leader Of Company (A), 2d Battalion (Airmobile), 8th Cavalry, 1st Cavalry Division, distinguished himself by heroic action while on ground combat operations against a hostile enemy force in Binh Tuy Province, Republic of Vietnam. At approximately 1030 hours Company (A) were being extracted after completing a ground reconnaissance mission, when they were engaged by an undetermined size enemy force, receiving enemy mortar fire. The first two mortar rounds that impacted took a heavy toll of friendly casualties including 1LT Clark. Although wounded 1LT Clark with total disregard for his own personal safety and his wounds exposed himself to enemy mortar fire as he moved forward and assist in carrying the other wounded members under cover. 1LT Clark continued to expose himself as he moved from position to posi-

tion directing his men to lay down a constant screen of smoke marking their position to Gunships giving them fire support. 1LT Clark's heroic action and aggressiveness, enabled the mission to be a complete success. Resulting in one (1) enemy soldier killed. His display of personal bravery and devotion to duty were in keeping with the highest traditions of the military service, and reflect great credit upon himself, his unit, and the United States Army.

Mr. FRIST. In a career spanning over 30 years, Robert T. Clark has consistently displayed that uncommon courage and leadership he showed on the battlefield in Vietnam. He has earned the admiration of all who know him, both in and outside of military life.

GEN John Wickham, former Chief of Staff of the Army, says General Clark is unequivocally "one of the most ethical, moral, people-oriented and charismatic leaders I have ever known."

GEN John Keane, whom the senior Senator from Massachusetts so lavishly praised earlier, calls General Clark "a man of great character. He's a great moral force and a very compassionate person. Simply stated, he's one of the Army's very best leaders." Those are the words of GEN John Keane.

It is my honor to rise today and support this nomination of this outstanding soldier. General Clark has earned numerous awards for his extraordinary service, including four awards of the Legion of Merit, three Bronze Stars, the Purple Heart medal, four meritorious service medals, the Air Medal, the Air Commendation Medal, and numerous campaign service medals for service in Vietnam as well as Saudi Arabia.

He has earned the Combat Infantryman's Badge, the Army Staff Identification Badge, the Parachutist Badge, the Ranger Tab, and the Air Assault Badge.

During the gulf war, then Colonel Clark commanded the 3rd Brigade of the 101st Airborne. Under his leadership, the 3rd Brigade conducted one of the longest and largest airborne assaults in military history. More than 2,000 men, 50 transport vehicles, artillery, and tons of fuel and ammunition were air lifted at that time 50 miles into Iraq. Land vehicles took another 2,000 troops deep into the Iraqi territory. All of this was accomplished in 72 hours without a single American casualty. Only two Iraqi soldiers were killed and 22 wounded.

With characteristic modesty, General Clark explained the brigade's truly remarkable success by saying, "We're the first guys who ask them to lay down their weapons, and they did. It just took a little convincing."

General Clark earned a Bronze Star for his command of the historic mission.

In 1998, General Clark was elevated to command the 101st Airborne Division at Fort Campbell, which, as most know, is situated on the border of Tennessee and Kentucky. Indeed, Fort Campbell can be described as a small to midsize city comprised of about 50,000

soldiers and civilians. There are homes, schools, a fire department. It is a complex and diverse place. During his 2-year tenure there—and I had the opportunity to meet with General Clark there on several occasions—General Clark's reputation for fairness and compassion extended way beyond the base, well into the surrounding community.

In February of 2000, the Clarksville City Council unanimously passed a resolution praising General Clark for his "high standards of leadership, professionalism, and integrity."

The Montgomery County Board of Commissioners passed a similar resolution declaring:

General Clark's reputation in the local communities is highly acknowledged as one of the brightest, caring, and respected division commanders that the Army has sent to our local community.

Indeed, General Clark is one of the finest men in uniform today. He currently serves as the acting commander of the 5th U.S. Army at Fort Sam Houston. I should mention, as an aside, that General Clark requested the assignment so that he could take care of his wife who suffers from a chronic illness.

General Clark's peers call him "a soldier's soldier." He descends from two generations of Clark men who have served the Army with dedication and honor.

And thus, as I began a few minutes ago, I close by saying, and I do call him a true hero. I strongly support his elevation to the second highest rank in the U.S. Army.

The PRESIDING OFFICER. All time having expired, the question is, Will the Senate advise and consent to the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

The nomination was confirmed.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, Executive Calendar items 436 through 450, and all remaining nominations on the Secretary's desk, are confirmed; the motions to reconsider are tabled, the President is notified, and the Senate returns to legislative session.

The nominations considered and confirmed en bloc are as follows:

IN THE AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Victor E. Renuart, Jr., 0000

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Richard V. Reynolds, 0000

The following named officer for appointment in the United States Air Force to the