

talk about it. You are not afraid to go on the record. Judge Roberts has been afraid to show or demonstrate any signs that he has changed. I wonder whether it is part of his mindset.

To follow the words of JOHN LEWIS, we don't have from John Roberts a demonstration of the kind of courage of Frank Johnson, that Alabama Federal judge who issued rulings that allowed Martin Luther King, Jr. as well as JOHN LEWIS and others to march from Selma to Montgomery, rulings that permitted African Americans to organize a boycott of the city of Montgomery's segregated bus system following the arrest of Rosa Parks.

Judge Johnson was also called the most hated man in Alabama by the Ku Klux Klan and received so many death threats that he and his family were under constant Federal protection from 1961 to 1975, with crosses burned on the lawn of his family.

Judge Johnson's enemies, incidentally, called him a "judicial activist." So when you hear that term being used around here today, excuse me if I happen to believe that it has been used in cases where it was entirely inappropriate. Judge Frank Johnson spoke out for civil rights at a moment in America's history when we needed a judge with courage, and risked a lot to do so. He showed courage to do so. If that is judicial activism, then thank goodness for a judicial activist who was sensitive to civil rights in America.

Many conservatives have also railed against the Supreme Court's references to international laws and legal opinions in recent cases. This was an interesting sideline to this hearing. Putting John Roberts on the spot: Does he promise, if he goes on the bench, that he won't be looking to legal opinions from foreign countries.

I was disappointed to hear Judge Roberts' reply. He embraced this hostility toward even considering lessons of foreign law. What does it say of us as a nation when we try to promote democratic ideas around the world and yet recoil at the thought of another country having useful ideas for our own Nation to consider?

Of course, U.S. judges don't base their decisions entirely on foreign law or legal opinions, but the experience of other democracies may help inform their thinking. Just last week, Justice Ginsburg defended the practice of Supreme Court reference to foreign legal opinions, not for precedent but for guidance. She observed:

I will take enlightenment wherever I can get it.

I hope Judge Roberts will reconsider this position and take heart not only in Justice Ginsburg's wise words but also the wise words of the man whose robes he hopes to fill, Chief Justice Rehnquist, who once said:

When many constitutional courts were created after the Second World War, these courts naturally looked to decisions of the Supreme Court of the United States, among other sources, for developing their own law. But now that constitutional law is solidly

grounded in so many countries, it is time that the United States courts begin looking to the decisions of other constitutional courts to aid in their own deliberative process.

It amazes me that this has become such a whipping point for some political groups in this town. Of course, we should consider other legal opinions from other countries as Justice Ginsburg and Chief Justice Rehnquist suggested. American law will decide the case, but as Justice Ginsburg said, we should take enlightenment wherever we can find it.

I think Supreme Court nominees carry the burden of proof when they come before the Senate. They must prove they are worthy of a lifetime appointment to the highest Court in the land. In the case of Judge Roberts, the burden of proof is especially heavy because President Bush refused to share memos from the period of time when John Roberts served as the Principal Deputy Solicitor General. Those more contemporary memos would have given us a greater insight into what he really believes on some critical issues, but the Bush administration said "no." They denied us these documents.

When it came to the Reagan-era memos, many times Judge Roberts argued they were so old they should be discounted.

I also think Judge Roberts bears a heavy burden of proof because he has been nominated to serve as Chief Justice. When he is approved this week, we will move from the Rehnquist Court to the Roberts Court for 20 or 30 years to come.

The Chief Justice is the most important and powerful judge in America. We need a Chief Justice who has wisdom, courage, and compassion.

At the beginning of the process, Judge Roberts came by my office. I had a chance to sit down for a few minutes with him. I want to congratulate him and thank him for doing that not only for my benefit but for the benefit of so many other Senators. I like him. During the hearings, I looked at his wife and his kids and I said, This is a man I really could like. As I said earlier, I promised him a clean slate but unfortunately he could not add much to that slate during the course of this process.

Next to a vote on whether America goes to war, the most important votes we cast as Senators are for Justices of the Supreme Court. That Court, more than any other institution in America, is the most important when it comes to America's rights and liberties.

The decision made by those nine Justices can change the face of democracy in America. That Court has done that so many times in the past and can certainly do it in the future. Their decisions, more important than any single law we pass, can decide basic personal freedoms for millions of Americans.

I sincerely wish I believed that John Roberts was the right person for this historic appointment. I will vote no on his nomination, but I will pray that John Roberts proves to be a Chief Jus-

tice with not only a great legal mind but also the courage of Judge Frank Johnson of Alabama and the understanding heart of Solomon.

WAR IN IRAQ

Mr. DURBIN. Mr. President, this week, just days before the end of the fiscal year, we are going to consider the Defense appropriations bill. This is an important bill for America's national security. The chairman, ranking member, and their staffs worked long and hard on it. I appreciate their commitment and willingness to work with both sides.

Before we even take up this bill, however, we could and should have voted on the Defense authorization bill, which includes critical policy matters crucial to national security importance. As hard as it may be to understand in the midst of a war in Iraq and Afghanistan, the Republican leadership in the Senate pulled the Defense authorization bill from the calendar in July and replaced it with a bill that was requested by the National Rifle Association.

The gun lobby wanted a bill to excuse them from liability in lawsuits and the Republican leadership in the Senate felt that was more important than the Defense authorization bill, which considered massive policy questions involving hundreds of thousands of men and women in uniform and veterans.

I do not understand that thinking. The appropriations bill we will hopefully take up this week includes \$50 billion for military operations in Iraq and Afghanistan. I said, at the start of the war in Iraq, that while I felt the invasion was a mistake, I would not deny one penny to our troops in the field for body armor, medical supplies, air support, ammunition, equipment, or any other costs associated with our forces and their security.

I have always thought that if it were my son or daughter in uniform, I would not shortchange them one penny, so that they could come home safely with their mission accomplished, and that is still my pledge.

The American people should be aware of what this war is costing us. First and foremost, it continues to cost American lives. This month, while most Americans were glued to their televisions focusing on Katrina and Rita, the hurricanes that struck us in the Gulf of Mexico, 37 more American soldiers died in Iraq.

Last month, while Congress was in recess, 85 Americans were killed in Iraq. All told, 1,921 Americans have been killed as of today and 14,755 have been wounded. Many have suffered devastating permanent injuries.

Senator HARRY REID and his wife Landra went to Bethesda Medical Center yesterday. Senator REID came to tell us this morning the sad experience he had there, where he saw a young soldier in a wheelchair who had clearly been maimed by this war in ways that

are hard to believe. Having lost both legs and suffered a head injury, it is clear that his life will never, ever be the same. Senator REID said to us again at lunch, he cannot get this image from his mind.

When we hear of injured soldiers, we should not believe that these are superficial injuries which can be easily overlooked. Many of those are life changing, life transforming.

This war has cost us in so many other ways as well. Sadly, it has undermined our war on terrorism, while it has created a new front in this conflict and an advanced training ground for terrorists. It has stretched our Armed Forces, especially our Army, National Guard, and Reserves, placing enormous strains on service members and their families. It has diminished our national credibility. That loss of credibility makes it harder now for the administration to go to the United Nations and present information that is needed about security in the world. Some of the presentations made in the lead up to the war in Iraq have cost us dearly in terms of our credibility.

A nuclear Iran is a terrible threat, but I know much of the world is probably wondering if they believe any photographs that we produce relative to that threat in Iran after the discredited photos before our invasion of Iraq. Some Americans probably are asking the same question, and their doubts are another unfortunate product of this conflict.

There are enormous costs to this war. We have already spent over \$196 billion in Iraq. This week or next we are likely to approve another \$50 billion, which will not cover the cost of the war next year. It is a downpayment for the beginning of those costs. We are currently spending close to \$5 billion a month in Iraq, and we are acting on this bill this week in part because of the report that the Pentagon is growing short of money. The new fiscal year starts in several days, and that makes it virtually inevitable that at some point next year, maybe as early as next spring, we will be voting another supplemental appropriation to fund the war in Iraq.

I think simply staying the course under these circumstances is no longer an option. The costs in blood and treasure are too high and the progress in Iraq is not there.

The costs of this war have been brought home to my State. We have lost 77 of our sons and daughters in this war, and by one calculation it has cost the taxpayers in the city of Chicago alone \$2.2 billion. Last week, the Chicago city council passed a resolution addressing the war in Iraq. They did so not because they believe that they are in charge of foreign policy but because they wanted to speak their minds. The city council's resolution honors the men and women who serve and those who have been killed or wounded. It states that through their service and sacrifice, our troops have substantially

accomplished the stated purpose of the United States of giving the people of Iraq a reasonable opportunity to decide their own future.

The resolution concludes that we should, therefore, make an orderly and rapid withdrawal from Iraq. That is the conclusion of the Chicago city council; it is not mine. But I sure understand the motivations and I sure hear many people back in Illinois saying exactly those words. I think millions of Americans understand and share the sentiments.

Polls show that 63 percent of the people in this country believe we should withdraw all or some of our troops from Iraq. This past weekend, at least 100,000 people, maybe many more, marched on Washington to call for a way out of Iraq. They came from all over the country and from many walks of life. I do not think a rapid withdrawal is in the best interests of Iraq or the United States, but I understand why they came, and I understand why they are trying to raise this issue. It troubles me that we can go for days on end in the Senate without ever talking about the war in Iraq that is so much in the forefront of the minds of the American people.

I bring these charts to the floor as a reminder that as our daily business goes apace, Americans are losing their lives and suffering terrible injuries.

America cannot simply stay the course in Iraq. The administration claims its strategy is working, but there is very little evidence of that. The insurgents are getting more violent, more lethal. Their attacks are killing more people. That is the nature of insurgency. It is an insurgency against foreign occupiers. History says that this can go on for a long time. Do we possess more fire power than these insurgents or terrorists? We sure do, but we alone cannot use that military fire power to be successful.

Our military leaders tell us one cannot score a military victory over an insurgency. It is going to take a political victory. The only people who can defeat or win over Iraqi insurgents are the Iraqis themselves, not our brave soldiers. The only people who can build a sustainable government in Iraq are the Iraqis, and those military and political developments must be linked or neither will succeed.

That linkage is something we were never able to accomplish in Vietnam so many decades ago. What we saw instead in South Vietnam was a long line of corrupt governments with little legitimacy and even less popular support.

We still wait to see whether the Government of Iraq will be up to this challenge. In a few weeks, the people of Iraq will vote on a draft constitution. I hope that the October referendum on this constitution encourages a vigorous and peaceful political process and healthy voter turnout from all sectors of Iraqi society—Shiites, Sunnis, Kurds, and others. One vote does not

make a democracy. Regardless of the outcome of the referendum, it is critical that the same people who turn out to vote engage in the state-building that must follow.

This week, according to the schedule, we are taking up the Defense appropriations bill. For the first time, more than 3 years into this bill, we are finally trying to budget for at least some of the costs of this war. Any other time we passed it by emergency supplemental appropriations.

May I say a word about that for a moment. Is it not curious that when it comes to rebuilding the devastation from Hurricane Katrina and Hurricane Rita, that there are many who are arguing that we need to cut spending in other programs, such as health care for the poor or prescription drugs for senior citizens, to pay for that reconstruction in America? There was not a single member of the other political party, that I know of, who came forward and argued for setoffs when it came to the reconstruction of Iraq. Is it not odd that we do not need to set off by cutting spending to rebuild Iraq but now many of these same Congressmen and Senators are saying that before we can help rebuild America we have to cut critical programs for the needy people of this country? I do not understand their logic. It is certainly inconsistent.

We cannot budget for the human costs of war, and we cannot put a number on the possible strategic costs, but we should at least try to account for the fiscal price tag of this conflict. We have to measure those hundreds of billions of dollars which have been spent and will be spent against what we need in America to make our Nation strong.

Last month, when Katrina struck, a third of the Louisiana National Guard was deployed to Iraq. So was much of their equipment. These deployments have had real homeland security consequences. We have learned that we were not only unprepared for Katrina, but we have to learn the lessons of Katrina to be prepared, God forbid another disaster, either natural or terrorist-inspired, should occur. We owe it to our taxpayers to measure those costs. We must also measure the costs of war against the progress Iraqis are making, and I do not see a lot of progress, though I hope that changes.

One thousand nine hundred and twenty-one American soldiers have died in Iraq. Before this number hits 2,000, we have a duty to give our troops and the American people an honest appraisal of the situation and a clear plan to bring the troops home.

When the President of Iraq, Mr. Talabani, announces that by the end of this year, in a few months, 50,000 American troops can come home, the Iraqis are ready to take over that responsibility, let us hold him to that promise. Let us hold him to that responsibility. Unless and until the Iraqis feel that they have to step up to defend their own country, American lives will continue to be lost every single day. We

owe our fighting men and women leadership, vision and direction.

FAMILIES USA MEDICARE REPORT

Mr. DURBIN. Mr. President, today a report was released showing the median difference between the lowest Medicare discount card price and the best available price for the Veterans' Administration. The difference was 58 percent.

Most people realize we are about to start this Medicare prescription drug plan. This plan was created to give seniors a discount on prescription drugs, which is something we need. Prescription drugs keep seniors healthy, and the healthier they are the better their lives and the less costs to taxpayers.

But many of us objected to the original Medicare prescription drug plan because it was drawn up, frankly, by the pharmaceutical companies. They were unwilling to give up any of their profits to a Medicare plan, and that is how the law was written. As a result of that, many of us voted no, saying there is a model we should follow. Currently, the Veterans' Administration provides prescription drugs to hundreds of thousands of veterans across America. To provide the drugs, the Veterans' Administration bargains with the pharmaceutical companies for the lowest possible price. We said, Why wouldn't the Medicare system, which is much larger—embracing, I think, some 40 million Americans—why wouldn't the Medicare system be in a strong bargaining position to get the same discounted drug prices and therefore help the seniors to lower costs and reduce the burden on taxpayers that have to subsidize this program? It makes sense for the VA, why wouldn't it make sense for Medicare? The pharmaceutical companies ended up winning that debate. They ended up creating a system under Medicare which does not allow the Medicare system to bargain for lower drug prices.

A group called Families USA took a look at the Medicare drug discount cards being used by seniors today and compared the best prices—not the worst, but the best prices being paid by seniors with those discount cards with the amount being paid by the Veterans Administration for identical drugs. Now we took a look at the most prescribed drugs for seniors, Families USA did, and here is what they found:

For Norvasc, the lowest price per year for treatment under Medicare-approved discount, \$467; VA pricing, \$301; percentage difference, 54 percent.

Protonix, \$827 to Medicare; \$253 is what the VA pays; a difference of 226 percent. And Zocor, \$793 under Medicare prescription drug cards; \$167 a year at the VA. That means we will pay, under the Medicare prescription drug plan, the President has signed and is about to go into effect, almost four times as much for the same drugs that are being dispensed at the Veterans Administration.

That tells a story. It tells us if we use the same bargaining power as the VA, we could save seniors and taxpayers dollars.

When the Medicare prescription drug benefit was designed, it was for the pharmaceutical companies and the HMOs, not for seniors. This report from Families USA makes that point.

Medicare has 25 times the number of people covered by the program as the Veterans' Administration. Imagine, for a moment, the bargaining power of Medicare compared to VA. Unfortunately, instead of simply offering a drug benefit through Medicare and negotiating these bulk discount prices, this Congress and the President handed the drug benefit over to these private pharmaceutical companies.

The bill we passed in 2003 is almost impossible to describe. I can't understand how most seniors will get through this bureaucratic mess that we created with this bill. CMS announced last week that there will be 34 active pharmaceutical regions in the United States. Each one of these regions will have 11 to 20 organizations offering prescription drugs. Illinois, my State, will have 16. So with an average of 15 plans in each region, there will be 510 different organizations across the Nation negotiating with pharmaceutical companies.

It is easy to see we have reduced the bargaining power of these plans in each one of these regions and therefore can expect to pay even more for the basic drugs that the seniors need. Instead of the Secretary of Health and Human Services negotiating on behalf of one pool of 41 million seniors for lower drug prices, Medicare's purchasing power has been divided into 510 small fractions. Bulk purchasing by the Department of Health and Human Services would surely save Medicare significantly more money than handing the negotiation over to these private sector negotiators.

There is a lot of talk in Congress these days about reimportation of drugs from other countries as a way to lower prices. Look to the North. Canada has much lower drug prices than the United States for exactly the same drugs, made by the same companies, that are sold in the United States. However, with just 2 percent of the worldwide pharmaceutical market, Canada does not possess the market power necessary to influence prices through negotiation. They do it through regulation.

The United States, on the other hand, has 53 percent of the worldwide prescription drug market. Half of it is made up of Medicare beneficiaries. Imagine the savings we could achieve simply by giving the Medicare program the authority to negotiate on behalf of its beneficiaries. Unfortunately, in addition to dividing up the purchasing pool, the Medicare prescription drug bill Congress passed specifically forbids the Secretary of Health and Human Services to negotiate with drug companies for lower prices.

The obvious question is, What good would that do if you gave the Secretary the power to negotiate? You remember the anthrax crisis—we all do; and the fear of anthrax contamination led many to prescribe Cipro as a drug to protect those who might have been exposed. This was in October 2001. After anthrax was found on Capitol Hill, this drug Cipro made the news. The average retail price for Cipro in 2001 was \$4.67 for each tablet. That is when the anthrax crisis started. So Secretary Tommy Thompson, in President Bush's Cabinet, and the President of Bayer Corporation, announced a pricing agreement for the Government purchase of Cipro in which Bayer would provide HHS with the first 100 million of Cipro at 95 cents per tablet. Look at that, when we bargained with Bayer to reduce the price of Cipro, they cut it down to less than a fourth of what was being charged before this negotiation.

The Government reserved the right to purchase an additional 100 million tablets at 85 cents and another 100 million at 75 cents. Through negotiation, Secretary Thompson brought down the price of Cipro by 490 percent.

That same negotiating mechanism can and should be used on behalf of seniors in America to reduce the cost of prescription drugs and the cost to taxpayers. According to the Washington Times, after the deal was struck, Secretary Thompson said at a press conference:

Everybody said I wouldn't be able to reduce the price of Cipro. I'm a tough negotiator.

We should have let Secretary Thompson negotiate these prescription drug prices on behalf of all Medicare beneficiaries, but the bill specifically prohibits him from doing it.

I have introduced a bill called the Medicare Prescription Drug Savings Act, which instructs the Secretary of Health and Human Services to offer a nationwide Medicare-delivered prescription drug benefit in addition to the PDP and PPO plans available in the 10 regions and negotiate repurchasing agreements on behalf of beneficiaries who choose to receive their drugs through the Medicare-administered benefits.

Beneficiaries who choose to enroll in the Medicare-administered benefit can stay enrolled as long as they desire. Giving Medicare the authority to negotiate is the right prescription for real savings on drug prices. Not only will this bill provide seniors with lower cost drugs, it will give them a choice to enroll in a Medicare-delivered plan, cutting down on the confusion that the privately delivered system has already created.

Critics and the pharmaceutical industry would say my bill is price controls and big government. They are wrong. It is good old-fashioned free market economics. If one buys in bulk, the price goes down. It is also a benefit in the system that American seniors believe works. Let's make this process