He has spent his entire 35 years of Senate service working in the Disbursing Office. That in itself is a commendable feat.

In 1970, Tim began his career as a payroll clerk and was promoted to payroll supervisor 6 years later. He continued to receive promotions and in 1998 became the Senate's financial clerk. Tim's career in the Disbursing Office has been stellar. You could always count on Tim and his staff for topnotch service and to accommodate Members and staff.

Tim and his wife Pat met in high school, got married, and have two children, Matthew and Lory. Matt and Lory have provided Tim and Pat with four grandchildren—two boys and two girls.

Tim plans to spend the first 6 months trying to get his sea legs, enjoying some ''downtime'' with his family and playing a little golf. He and Pat then plan to do some traveling. They want to go to Alaska to see what is happening there.

I salute Tim on his service to the Senate and congratulate him on a job well done. He certainly was part of the Senate family and always will be. I hope he enjoys his retirement.

IRAQ AND THE DEPARTMENT OF DEFENSE AUTHORIZATION BILL

Mr. REID. Mr. President, let me say this. Ambassador Negroponte came to the Senate the last time this past May. Did he talk anything about what was going on with intelligence in Iraq or what was going on in Iraq, period? No. He talked about international terrorism. It is not as if we have been bothering the Ambassador having him come here all the time.

But I am disappointed to have to report to the American people this is what is going on with this administration: You never get to what the issue is. Put it off. Do not talk about it. Stay the course.

In Iraq we have some problems: almost 2,000 dead Americans; 15,000, 16,000 wounded, many of them very badly.

I in no way say this to disparage the managers of this bill, one of whom is a winner of the Congressional Medal of Honor, Senator DAN INOUYE; the other served valiantly in World War II as a pilot. But their job would be much easier if they had a Defense authorization bill prior to coming here to this floor with an appropriations bill. It makes their job, if not impossible, extremely difficult.

Let me explain what I am talking about. You authorize funding in the Congress, and then it goes to the all-important Appropriations Committee, and they determine what of the authorization bill deserves money. That is basically what it amounts to. There has to be some limit to spending, and that is what the Appropriation Committee's job is; to determine whether the money should be spent.

Well, here there is no authorization bill. There is legislation in the authorization bill that deals with retirement pay for the military, with pay raises for the military, with all kinds of programs for the veterans, the National Guard and Reserve. The Appropriations Committee does not have the benefit of that. They will be working, in effect, on last year's law.

I do not know how we could ever—I am sure it has happened sometime in the far distant past. I am sure it has happened. I hope it does not happen in the future that they try to do this jury-rigged system, where you take an appropriations bill without having done an authorization bill.

There are matters in that authorization bill dealing with prisoner abuse. A number of people want to offer amendments. They cannot offer an amendment on the appropriations bill dealing with prisoner abuse.

I see my friend, the Senator from South Carolina, in the Chamber, the mover of the legislation to have a look at what has gone on in Abu Ghraib and other prison facilities the military has. I think the author of the bill, Senator MCCAIN from Arizona, may have a little bit of expertise on prisoner of war abuse. I think he may have a little bit of authenticity when he comes before the Senate and says he wants to take a look at that.

JOHN MCCAIN spent years of his life in a prison camp in Vietnam, not days, weeks, months but years—try 5½ years—most of it in solitary confinement. So he wants to offer an amendment. He cannot do it unless he gets unanimous consent that he can have a vote on it. He can offer it, but it falls similar to everything else. But I will bet he is going to get unanimous consent because we want him to be able to debate this issue. Who has more standing than the Senator from Arizona to raise this as an issue?

Mr. President, we—I repeat—had a scheduled briefing at 3 o'clock today to find out what is going on in Iraq dealing with intelligence. We have never, ever had a briefing by Negroponte since he has assumed his duties as head of the so-called DNI on April 21 of this year. We have not been briefed by him on Iraq since he assumed his position. So I do not think we are being greedy taking an hour of his time.

Ducking debates about our national defense has become too topical and typical in this country because we are unable to bring matters before this floor. No amendments, no votes, no debates—that is not the way to do a bill in the Senate.

Why didn't we finish the Defense authorization bill the first time? Because we went to gun liability. So this process is unacceptable. We are a nation at war. We have troops in Iraq, in Afghanistan. We have an opportunity to have an open, honest debate about our national defense.

Our troops and the American people deserve better, and that is not what we are having here. And the distinguished majority leader said he was offended because I asked for a briefing by the Intelligence Director of this country. Offended? I am sorry he is offended.

RESERVATION OF LEADER TIME

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

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 2863, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

Pending:

Bayh amendment No. 1933, to increase by $360,800,000 amounts appropriated by title IX for Other Procurement, Army, for the procurement of armored Tactical Wheeled Vehicles for units deployed in Iraq and Afghanistan, and to increase by $5,000,000 amounts appropriated by title IX for Research, Development, Test and Evaluation, Defense-Wide, for industrial preparedness for the implementation of a ballistics engineering research center.

McCain amendment No. 1978, to prohibit the use of funds to pay salaries and expenses and other costs associated with reimbursing the Government of Uzbekistan for services rendered to the United States at Karshi-Khanabad airbase in Uzbekistan.

Reed/Hagel amendment No. 1943, to transfer certain amounts from the supplemental authorizations of appropriations for Iraq, Afghanistan, and the Global War on Terrorism to amounts for Operation and Maintenance, Army, Operation and Maintenance, Marine Corps, Operation and Maintenance, Defense-wide activities, and Military Personnel in order to provide for increased personnel strengths for the Army and the Marine Corps for fiscal year 2006.

Warner/Levin modified amendment No. 1955, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

AMENDMENT NO. 1977

Mr. MCCAIN. Mr. President, from my conversations with the Senator from Alaska, the chairman, I believe he agrees we will move forward; therefore, I call up amendment No. 1977, which is filed at the desk.

The ACTING PRESIDENT pro tempore. Without objection, the pending amendments are set aside for the consideration of this amendment, which the clerk will now report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, Mr. GRAHAM, Mr. HAGEL, Mr. SMITH, and Ms. COLLINS, proposes an amendment numbered 1977.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: Relating to persons under the detention, custody, or control of the United States Government)

At the appropriate place, insert the following:

SEC. ___. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

(b) APPLICABILITY.—Subsection (a) shall not apply to with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

SEC. ___. PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT OF PERSONS UNDER CUSTODY OR CONTROL OF THE UNITED STATES GOVERNMENT.

(a) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) CONSTRUCTION.—Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(c) LIMITATION ON SUPERSEDURE.—The provisions of this section shall not be superseded, except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.

(d) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this section, the term ''cruel, inhuman, or degrading treatment or punishment'' means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

Mr. MCCAIN. Mr. President, this amendment would do two things: one, establish the Army Field Manual as the uniform standard for the interrogation of Department of Defense detainees; and, two, prohibit cruel, inhumane, and degrading treatment of prisoners in the detention of the Government. It is pretty simple and straightforward.

Mr. President, I regret, of course, as all my colleagues do, that this amendment has to be brought up on an appropriations bill. We are only doing so because so far we have been unable to get sufficient agreement to bring up the Defense authorization bill. I have made it very clear, over a long period of time, my feeling about how important it is to take up and complete the authorization bill, but that is a subject for another day. I know good-faith efforts are being made on both sides to try to get the authorization bill up. But that has not happened so, therefore, we are addressing this issue.

By the way, I have had a preliminary ruling that this amendment is germane because there is reference made to it in the House version of the appropriations bill.

The Senate has an obligation to address the authorizing legislation, as it has an obligation to deal with the issue that apparently led to the bill being pulled from the floor, which is America's treatment of its detainees.

Several weeks ago, I received a letter from CPT Ian Fishback, a member of the 82nd Airborne Division at Fort Bragg, and a veteran of combat in Afghanistan and Iraq, and a West Point graduate. Over 17 months, he struggled to get answers from his chain of command to a basic question: What standards apply to the treatment of enemy detainees? But he found no answers.

In his remarkable letter, he pleads with Congress, asking us to take action to establish standards to clear up the confusion, not for the good of the terrorists but for the good of our soldiers and our country. Captain Fishback closes his letter by saying:

I strongly urge you to do justice to your men and women in uniform. Give them clear standards of conduct that reflect the ideals they risk their lives for.

This comes from a young captain in the U.S. Army who has served his country both in Iraq and Afghanistan and who says it in a far more eloquent fashion than I have ever been able to. By the way, I thank God every day that we have men and women the caliber of Captain Fishback serving in our military. I believe the Congress has a responsibility to answer this call, a call that has come not just from this one brave soldier but from so many of our men and women in uniform. We owe it to them. We sent them to fight for us in Afghanistan and Iraq. We placed extraordinary pressure on them to extract intelligence from detainees, but then we threw out the rules that our soldiers had trained on and replaced them with a confusing and constantly changing array of standards. We demanded intelligence without ever clearly telling our troops what was permitted and what was forbidden. And when things went wrong, we blamed them, and we punished them. I believe we have to do better than that.

I can understand why some administration lawyers might have wanted ambiguity so that every hypothetical option is theoretically open, even those the President has said he does not want to exercise. But war doesn't occur in theory, and our troops are not served by ambiguity. They are crying out for clarity. The Congress cannot shrink from this duty. We cannot hide our heads, pulling bills from the floor and avoiding votes. We owe to it our soldiers during this time of war to take a stand. So while I would prefer to offer this amendment to the DOD authorization bill, I am left with no choice but to offer it to this appropriations measure. I would note that I am offering this amendment in accordance with the options afforded under rule XVI of the Standing Rules of the Senate.

The amendment I am offering combines the two amendments I previously filed to the authorizing measure. To fight terrorism, we need intelligence. That much is obvious. What should also be obvious is that the intelligence we collect must be reliable and acquired humanely, under clear standards understood by all our fighting men and women. To do differently would not only offend our values as Americans but undermine our war effort, because abuse of prisoners harms, not helps, in the war on terror.

First, subjecting prisoners to abuse leads to bad intelligence, because under torture, a detainee will tell his interrogator anything to make the pain stop. Second, mistreatment of our prisoners endangers U.S. troops who might be captured by the enemy—if not in this war, then in the next. And third, prisoner abuses exact on us a terrible toll in the war of ideas, because inevitably these abuses become public. When they do, the cruel actions of a few darken the reputation of our country in the eyes of millions. American values should win against all others in any war of ideas, and we can't let prisoner abuse tarnish our image. Yet reports of detainee abuse continue to emerge, in large part, I believe, because of confusion in the field as to what is permitted and what is not. This amendment will go a long way toward clearing up this confusion.

The first part of the amendment would establish the Army Field Manual as the uniform standard for the interrogation of Department of Defense detainees. The Army Field Manual and its various editions have served America well through wars against both regular and irregular foes. It embodies the values Americans have embraced for generations, while preserving the ability of our interrogators to extract critical intelligence from ruthless foes. Never has this been more important than today in the midst of the war on terror. The Army Field Manual authorizes interrogation techniques that have proven effective in extracting lifesaving information from the most hardened enemy prisoners. It is consistent with our laws and, most importantly, our values. Let's not forget that al-Qaida sought not only to destroy American lives on September 11, but American values, our way of life, and all we cherish.

We fight not just to preserve our lives and liberties, but also American

values. We will never allow the terrorists to take those away. In this war—that we must win, that we will win—we must never simply fight evil with evil.

This amendment would establish the Army Field Manual as the standard for interrogation of all detainees held in DOD custody. The manual has been developed by the executive branch for its own uses, and a new edition, written to take into account the needs of the war on terror and with a new classified annex, is due to be issued soon. This amendment would not set the field manual in stone. It could be changed at any time.

The advantage of setting a standard for interrogation based on the field manual is to cut down on the significant level of confusion that still exists with respect to which interrogation techniques are allowed. The Armed Services Committee has held hearings with a slew of high-level Defense Department officials, from regional commanders to judge advocate generals to the Department's deputy general counsel. A chief topic of discussion in these hearings was what specific interrogation techniques are permitted, in what environments, with which DOD detainees, by whom and when. The answers have included a whole lot of confusion. If the Pentagon's top minds can't sort these matters out, after exhaustive debate and preparation, how in the world do we expect our enlisted men and women to do so?

Confusion about the rules results in abuses in the field. We need a clear, simple, and consistent standard, and we have it in the Army Field Manual on interrogation. That is not just my opinion but that of many more distinguished military minds than mine. I refer to a letter expressing strong support for this amendment signed by 28 former high-ranking military officers, including GEN Joseph Hoar, who commanded CENTCOM; GEN John Shalikashvili, former Chairman of the Joint Chiefs of Staff; RADM John Hutson and RADM Don Guter, who each served as the Navy's top JAG; and LTG Claudia Kennedy, who served as Deputy Chief of Staff for Army Intelligence. These and other distinguished officers believe the abuses at Abu Ghraib, Guantanamo, and elsewhere took place in part because our soldiers received ambiguous instructions which in some cases authorized treatment that went beyond what the field manual allows, and that had the manual been followed across the board, we could have avoided the prisoner abuse scandal.

Why wouldn't any of us do whatever we could to have prevented that?

By passing this amendment, our servicemembers can follow the manual consistently from now on. Our troops deserve no less.

I ask unanimous consent that the letter from 29 retired military officers be printed in the RECORD.

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

SEPTEMBER, 2005.

DEAR SENATOR MCCAIN: We strongly support your proposed amendments to the Defense Department Authorization bill concerning detainee policy, including requiring all interrogations of detainees in DOD custody to conform to the U.S. Army's Field Manual on Intelligence Interrogation (FM 34–52), and prohibiting the use of torture and cruel, inhuman and degrading treatment by any U.S. government agency.

The abuse of prisoners hurts America's cause in the war on terror, endangers U.S. service members who might be captured by the enemy, and is anathema to the values Americans have held dear for generations. For many years, those values have been embodied in the Army Field Manual. The Manual applies the wisdom and experience gained by military interrogators in conflicts against both regular and irregular foes. It authorizes techniques that have proven effective in extracting life-saving information from the most hardened enemy prisoners. It also recognizes that torture and cruel treatment are ineffective methods, because they induce prisoners to say what their interrogators want to hear, even if it is not true, while bringing discredit upon the United States.

It is now apparent that the abuse of prisoners in Abu Ghraib, Guantanamo and elsewhere took place in part because our men and women in uniform were given ambiguous instructions, which in some cases authorized treatment that went beyond what was allowed by the Army Field Manual. Administration officials confused matters further by declaring that U.S. personnel are not bound by longstanding prohibitions of cruel treatment when interrogating non-U.S. citizens on foreign soil. As a result, we suddenly had one set of rules for interrogating prisoners of war, and another for ''enemy combatants;'' one set for Guantanamo, and another for Iraq; one set for our military, and another for the CIA. Our service members were denied clear guidance, and left to take the blame when things went wrong. They deserve better than that.

The United States should have one standard for interrogating enemy prisoners that is effective, lawful, and humane. Fortunately, America already has the gold standard in the Army Field Manual. Had the Manual been followed across the board, we would have been spared the pain of the prisoner abuse scandal. It should be followed consistently from now on. And when agencies other than DOD detain and interrogate prisoners, there should be no legal loopholes permitting cruel or degrading treatment.

The amendments proposed by Senator McCain would achieve these goals while preserving our nation's ability to fight the war on terror. They reflect the experience and highest traditions of the United States military. We urge the Congress to support this effort.

Sincerely,

Joseph Hoar, USMC (Ret.), General John Shalikashvili, USA (Ret.), General Donn A. Starry, USA (Ret.), Lieutenant General Ron Adams, USA (Ret.), Lieutenant General Robert G. Gard, Jr., USA (Ret.), Lieutenant General Jay M. Garner, USA (Ret.), Vice Admiral Lee F. Gunn, USN (Ret.), Lieutenant General Claudia J. Kennedy, USA (Ret.), Lieutenant General Charles Otstott, USA (Ret.), Vice Admiral Jack Shanahan, USN (Ret.), Major General Eugene Fox, USA (Ret.), Major General John L. Fugh, USA (Ret.), Rear Admiral Donald J. Guter, USN (Ret.), Major General Fred E. Haynes, USMC (Ret.). Rear Admiral John D. Hutson, USN (Ret.), Major General Melvyn Montano, ANG (Ret.), Major General Robert H. Scales, USA (Ret.), Major General Michael J. Scotti, USA (Ret.), Brigadier General David M. Brahms, USMC (Ret.), Brigadier General James Cullen, USA (Ret.), Brigadier General Evelyn P. Foote, USA (Ret.), Brigadier General David R. Irvine, USA (Ret.), Brigadier General Richard O'Meara, USA (Ret.), Brigadier General John K. Schmitt, USA (Ret.), Brigadier General Stephen N. Xenakis, USA (Ret.), Ambassador/Former Vietnam POW Douglas ''Pete'' Peterson, USAF (Ret.), Former Vietnam POW Commander Frederick C. Baldock, USN (Ret.), Former Vietnam POW Commander Phillip N. Butler, USN (Ret.).

Mr. MCCAIN. The second part of this amendment should not be objectionable to anyone since I am actually not proposing anything new. The prohibition against cruel, inhumane, and degrading treatment has been a longstanding principle in both law and policy in the United States. Before I get into why the amendment is necessary, let me first review the history.

The Universal Declaration of Human Rights, adopted in 1948, states simply:

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

The International Covenant on Civil and Political Rights, to which the United States is a signatory, states the same. The binding Convention Against Torture, negotiated by the Reagan administration and ratified by this body, prohibits cruel, inhuman, and degrading treatment. On last year's DOD authorization bill, the Senate passed a bipartisan amendment reaffirming that no detainee in U.S. custody can be subject to torture or cruel treatment, as the U.S. has long defined those terms. All of this seems to be common sense, in accordance with longstanding American values. But since last year's DOD bill, a strange legal determination was made that the prohibition in the Convention Against Torture against cruel, inhuman, or degrading treatment does not legally apply to foreigners held outside the United States. They can apparently be treated inhumanely. This is the administration's position, even though Judge Abe Soafer, who negotiated the Convention Against Torture for President Reagan, said in a recent letter that the Reagan administration never intended the prohibition against cruel, inhuman, or degrading treatment to apply only on U.S. soil.

What all this means is that America is the only country in the world that asserts a legal right to engage in cruel and inhuman treatment. But the crazy thing is, it is not even necessary because the administration has said it will not engage in cruel, inhuman, or degrading treatment as a matter of policy. What this also means is that confusion about the rules becomes rampant again. We have so many differing legal standards and loopholes that our lawyers and generals are confused. Just imagine our troops serving in prison in the field.

The amendment I am offering simply codifies what is current policy and reaffirms what was assumed to be existing law for years. In light of the administration's stated commitment, it should require no change in our current interrogation and detention practices. What it would do is restore clarity on a simple and fundamental question: Does America treat people inhumanely? My answer is no. And from all I have seen, America's answer has always been no.

I travel a lot around the world, usually at taxpayers' expense. Everywhere I go, I encounter this issue of the treatment of prisoners and the photos of Abu Ghraib and what is perceived in the world to be continued mistreatment of prisoners. It is harming our image in the world terribly. We have to clarify that that is not what the United States is all about. That is what makes us different. That is what makes us different from the enemy we are fighting. The most important thing about it is not our image abroad but our respect for ourselves at home.

Let me close by noting that I hold no brief for the prisoners. I do hold a brief for the reputation of the United States of America. We are Americans. We hold ourselves to humane standards of treatment of people, no matter how evil or terrible they may be. To do otherwise undermines our security, but it also undermines our greatness as a nation. We are not simply any other country. We stand for something more in the world, a moral mission, one of freedom and democracy and human rights at home and abroad. We are better than these terrorists, and we will win. The enemy we fight has no respect for human life or human rights. They don't deserve our sympathy. But this isn't about who they are; this is about who we are. These are the values that distinguish us from our enemies.

I urge my colleagues to support the amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, this is a difficult subject to discuss, and as the minority leader indicated, no one is more qualified to talk about this than the Senator from Arizona.

It is with some trepidation that I try to explain to him the position of the administration and with which I happen to agree. The problem is not the goal of the Senator from Arizona; the problem is the way it would be carried out under this amendment. This amendment would require that the field manual be changed. Currently the field manual has a general description of the techniques of interrogation, and it allows flexibility to determine what will be used in terms of interrogation techniques based upon the circumstances that exist. We know that terrorists train their people to deal with the techniques of our interrogation, so those techniques change under various circumstances.

One of the situations I would call to the attention of the Senator from Arizona is as we have visited with our people in the field, now we have a unique circumstance of having multinational and multiagency teams that are in the field. The question comes down to who has custody or effective control of a person. Particularly I remember one team we saw which had five different nationalities including the intelligence agencies and military agencies of those nations. If this becomes law, it is my opinion that those teams will be handled so that the United States does not have custody, does not have control, and the kind of treatment we seek will not be given to people who are made prisoners by multinational teams that are searching out terrorists throughout the world.

This is a different war now. I believe we are seeing the beginning of a crusade against freedom from the militant terrorist Islamic entities throughout the world. We see the suicide bombers. We see the people who are inflicting terrible damage from Indonesia, the Philippines, to all throughout the Central Command, and we have teams out trying to find these people.

Of course, one of their first jobs is to interrogate anyone they capture to try to see if we can find out where the rest of them are and how they are functioning. If this amendment passes, the United States will not have effective control of those people. It will be impossible to interrogate under the systems we have used in the past because we cannot list in a field manual all of the interrogation techniques that will be used. It takes thousands of pages anyway. But the techniques vary upon the circumstances and the physical location of the people involved.

I have some memory from World War II in China when I witnessed some of our people—I was just a pilot, but I was conveying some of these people from place to place who had been tortured, and I can tell you they were brutally treated by the Chinese when we were taking these people from place to place and they had prisoners. Some of them were not Chinese. They were prisoners obviously of Japan. We had freed some of them, and they were—I have memory that those who were freed were still the responsibility of the United States.

But as a practical matter, what do you do with regard to a law that says that all of the techniques must be listed in the field manual; regardless of nationality or physical location, if an individual is in the custody or physical control of the United States, they shall be subject to only the means of interrogation listed in the field manual.

I appreciate very much what the Senator is trying to do. I think most of us have gone down to Guantanamo to satisfy ourselves that what is happening down there is in accordance with our concepts. Those people are totally under the custody of the United States, and certainly from my point of view what we saw when we were down there, we were convinced they were receiving the kind of treatment and the interrogations were not such that they would be affected by this amendment.

It is the people in the field, not people really handling prisoner camps or handling interrogation of those persons who are seized by our forces and brought to a camp or brought to a place, a jail such as we all know has gone wrong in Iraq—but I am talking the people in the field now, multinational teams, and their job is to find out what these people who are captured know in order to prevent further acts of terrorism. It is a very touchy thing to deal with, I know, to really talk about it.

The administration has told us that they are complying with all the constitutional, statutory, treaty obligations that apply to U.S. interrogation practices. They are telling us that they know the Convention Against Torture requires the United States to ensure that torture is a crime whether committed anywhere by a U.S. national or to prevent any of the entities that are under the control of the United States from any acts of cruel, inhumane, or degrading treatment or punishment. We totally agree with the efforts of the Senator from Arizona in that regard, and the President has directed the Armed Forces to treat any detainee humanely and comply with the appropriate and consistent military procedures that are consistent with the Geneva Conventions.

That is a given. But this amendment goes further. This amendment will cover those entities with multiple nationalities, multiple agencies, and because of the circumstances our people in the past have taken control of these, and some of the activities of the other nationalities involved would not be consistent with this amendment. I say what will happen in the future is we will just not take control of them. This will be a deterrent to our people from taking the leadership, and as they do, they will do everything they can to comply with the Geneva Conventions. It is those circumstances, the new type of entities we use to combat terrorism that worries the administration. So I can say—and I know the Senator from Arizona understands—it is the position of the administration that this amendment goes too far.

We will not make a point of order. There is no point of order that I know will apply to it anyway. But I do believe it is a matter that ought to be approached with caution. What does a multinational team do if they pick up a prisoner who they believe can give them information as to the location of terrorists who have committed severe acts of terrorism? The decision will be made, I am sure, that we not take custody. The custody will go to other nationalities involved in the team. We will have no control. I believe the amendment of the Senator from Arizona is going to carry, but I believe we

have to give serious consideration to the implications I have just mentioned, and I hope the Senate will keep that in mind.

I yield the floor.

The PRESIDING OFFICER (Mr. MCCAIN). The Senator from South Carolina.

Mr. GRAHAM. Mr. President, No. 1, I would like to recognize that Senator STEVENS, who has so honorably served our country, is genuinely concerned about the extent of this amendment. For those of you who are listening, Senator STEVENS was a World War II pilot. He has gone in harm's way in defending his country. We have in the Chamber his counterpart on the Appropriations Committee, Senator INOUYE, a Medal of Honor winner, and the Senator occupying the chair is a former POW. The food chain is going down when I am speaking. But what I want to try to discuss today is from a lawyer's point of view and really from a citizen's point of view.

I have had the honor for the last 20-some years to be a member of the Judge Advocate General's Corps of the Air Force, a prosecutor, a defense counsel, and I am now a Reserve military judge. That experience has been a wonderful experience. I have received more out of it than given. Wearing the uniform in any capacity is quite an honor, and to be a military lawyer has been one of the highlights of my life. I have never been shot at. I had some clients who probably wanted to kill me. But other than that, I do understand this debate pretty well. To me, it is not much of a debate. We have as a nation adopted the position that Senator MCCAIN described when it comes to how you handle people in your care and custody.

One thing I would respond to Senator STEVENS is that the Army Field Manual has sort of been the bible for interrogation for decades. If you are worried, and I think it is a fair question, is there anything in the Army Field Manual that would unfairly restrict the ability of the United States to gain good information and defend ourselves from a bunch of rogue thug murderers, the answer is no. You don't have to trust me there. Go to Gitmo and ask the question of the people who are doing the interrogation of these terrorists: Is there anything in the Army Field Manual as written or being drafted that would impede your ability to gather good information? And the answer they told me was no.

So what is the value of having it? The value of having standardization when it comes to interrogation, detention, and prosecution is of immeasurable benefit to the force because, as Senator MCCAIN indicated, a lot of the people implementing these policies when it comes to interrogation, detention, and prosecution are in harm's way themselves. One of the things we have learned in this whole war on terror is that this Nation needs to have effective interrogation techniques, effective detention policies, and effective prosecution tools to hold the terrorists responsible because you have two audiences.

No. 1, you have the terrorist community. I want every terrorist to know, if you are not killed on the battlefield and you are captured, things are going to happen to you. You are going to be interrogated aggressively, but we are going to treat you humanely, not because we worry about your sensitivities but because we don't want to become who we are interrogating. So we are going to keep that in place.

The President has said whether the Geneva Convention applies or not we are going to treat everybody in our charge humanely, not because of them but because of us. And the debate here is what happens when somebody in your charge is not covered by the Geneva Conventions. It is easy when someone is a legal combatant. We know what the rules are. We have the Geneva Conventions. We have been a signatory for 60 years. The Army Field Manual covers that situation. The war on terror is different. Vietnam was different. We had people who were lawful, whom we were able to interrogate, detain, and prosecute without changing who we were.

The Army Field Manual as a one-stop shop to guide the way we handle lawful combatants and enemy combatants is absolutely necessary if for no other reason than to protect our own troops. That is why we are doing this. That is one of the main reasons—to make sure that your own troops don't get in trouble because they are confused.

I have been a military lawyer for 20 years. We have confused people about as much as you can possibly confuse them. And this all started with the Bybee memo. I think we need to know the history of where we have been, to find where we are before we take corrective action.

Right after 9/11, this Nation was shocked and shaken. We tried to make sure we could secure our freedom and security and do a balancing act, and we have done a pretty good job of it. How can you be secure and still free? How can you fight the worst enemy and still not become the worst of yourself? I think you can.

The Bybee memo was an effort by people at the Justice Department to take international torture statutes that we had ratified and been party of and have the most bizarre interpretation basically where anything goes. It was an effort on the part of the Department of Justice lawyers to stretch the law to the point the law meant nothing. And early on in this process, those in uniform who happened to be military lawyers stood up and spoke.

I am going to read from General Sandkuhler, Brigadier General of the U.S. Marines, who was one of the judge advocates to review this change in policy, this very liberal interpretation of what torture might be. He said:

> The common thread among our recommendation is concern for servicemembers. OLC [Office of Legal Counsel] does not represent the services; thus, understandably, concern for servicemembers is not reflected in their opinion. Notably, their opinion is silent on the UCMJ and foreign views of international law.

The general is telling the civilians that we live in a different world. This is a complex process, and if we interpret a torture statute in the way you are suggesting, we are going to get our own people in trouble.

He says:

> We nonetheless recommend that the Working Group product accurately portray the services' concerns that the authorization of aggressive counter-resistant techniques by servicemembers will adversely impact the following:
>
> a. Treatment of U.S. servicemembers by Captors and Compliance with International Law.

We have been the gold standard. We take this moral high ground to make sure if our people fall into enemy hands that we will have the moral force to say, You better treat them right. If you don't practice what you preach, nobody listens. Sometimes that does not happen, but you don't want to erode the principle because it puts people at risk.

Criminal and Civil Liability of DOD Military and Civilian Personnel in Domestic, Foreign, and International Forums.

All the reasons all the JAGs wanted to push back is that you are going too far if you interpret the statutes as being proposed by the Department of Justice. Some of the techniques violate the Uniform Code of Military Justice.

Senator STEVENS is concerned about joint operations. Here is the rule: If you are wearing America's uniform, you are going to be judged by American standards. You will never be prosecuted unless you do something inconsistent with our law. If you are part of an international group and wondering what to do with a prisoner in front of you, I suggest we let our troops know there are rules they must follow, and if they see anything they think is out of bounds, report it.

The best thing we can do for anybody operating in the war on terror is give them clarity about what to do in very stressful situations. There is the combat role. What do you do with somebody who is captured? You do what the President says: You treat them humanely, you interrogate them by standards we can live by that will not erode our moral authority.

Where have those standards been in the last 50 or 60 years? The Army Field Manual. You can change the Army Field Manual to adapt techniques to the war on terror. There is a classified section of the Army Field Manual. There is nothing about its adoption that limits the ability to aggressively interrogate people to get good intelligence. But if you want to torture people, the Army Field Manual says no and the President says no. It is now time for Congress to say no, and that is what this amendment is about.

Congress has been AWOL when it comes to the war on terror in terms of

interrogation, detention, and prosecution, and we have done it in a way that weakens our Nation. We are the strongest when all three branches are on the same sheet of music. It is important, if we are going to win this war on terror, not to give the moral high ground to your enemy and to have laws that every branch of Government understands and the people implementing these laws are not confused and they will not get in trouble by following what we have said. Congress has been AWOL. It is now time for Congress to step up to the plate and offer assistance in the war on terror to the administration. That is exactly what we are doing.

I asked Judge Roberts, during the confirmation process, about this whole line of questioning. I said:

Do you believe that the Geneva Convention, as a body of law, that it has been good for America to be part of that convention?

ROBERTS: I do, yes.

GRAHAM: Why?

ROBERTS: Well, my understanding in general is it's an effort to bring civilized standards to conduct of war—a generally uncivilized enterprise throughout history; an effort to bring some protection and regularity to prisoners of war in particular. And I think that's a very important international effort.

It is an important international effort, and al-Qaida should not be considered a lawful combatant under Geneva Conventions. But it is about us, as Senator MCCAIN said. When we catch someone who is not under the Geneva Conventions, it is important that our people not only follow the dictates of the President—treat them humanely—but they know what to do. We are giving confusing policies in this new war on terror, this hybrid between a lawful combatant, enemy combatant, and regular combatant. We need to standardize our techniques.

How do we do that to make America the strongest? How can we effectively do that? We get the Congress involved, we get the administration involved, and we get the courts involved. Right now we have two court cases that are all over the board. Judges are telling us—Justice Scalia in one of the court cases is screaming out that Congress has been absent here. Congress needs to speak because the courts are not equipped to run Guantanamo Bay. The courts are not well equipped to interpret military policy, and they need guidance from Congress.

I asked Justice Roberts about that. One of his favorite Justices is Justice Jackson. Justice Jackson in the Youngstown steel case basically said that the executive branch is at its strongest when it has the expressed or implied consent of Congress.

When I met with Judge Roberts on this whole issue about detention, interrogation, and prosecution of enemy combatants, he said this is an area where the courts would welcome congressional involvement.

As a result of us being AWOL in Congress, there is a Supreme Court decision, 5 to 4, giving enemy combatants at Guantanamo Bay habeas corpus rights. They are noncitizens, and they are able to go to Federal court because there is no clear direction from Congress about how to treat these people. Mr. President, 185 of them have lawyers, and they are absolutely overrunning the place. To me, it is absurd that an enemy combatant, noncitizen terrorist has habeas corpus rights, and the reason they do is because we are giving no guidance to the courts about how we want these people treated.

I believe it is now time to give guidance to the courts, to the country, to the international community, to those in uniform serving us, and to the terrorists about what we are going to do, and Senator MCCAIN's amendment has got it. It is the authority that has been missing in this great effort to win the war on terror. It is now bringing standardization into an area which had been previously chaotic. Every military lawyer who has been looking at the policies proposed has come away confused.

Let me tell you unequivocally that the military legal community understands what Senator MCCAIN is doing and wholeheartedly adopts his efforts, that not only would it be good for the Congress to speak with the same authority as the President, but it would help the courts, and it would be good for our troops if they had the protection of standardization.

If you want to help our troops who are trying to win this war on terror, give them the cover they need and the guidance they need. Do not throw them to the wolves. We have had people prosecuted because they have been given an impossible task. They have been given the task of interpreting laws that make no sense. And if you really do want to stand by the troops, give them guidance. Give them the guidance and the tools they can use to get good information, not bad information, and get information in a way that does not embarrass our Nation and put us at risk.

Abu Ghraib has been a giant step back, a huge step back, and one of the reasons we had Abu Ghraib is because nobody there knew what they were doing. They were not trained. They were overwhelmed. They did not have consistency when it came to interpreting the interrogation policies because the policies made no sense. Some people are in jail now. Most of them are in jail because of their own misconduct. Some people have had their careers ruined because they are trying to interpret policies nobody can understand.

That is a huge deviation from the way we conducted war for 50 to 60 years, and we paid the price. We are allowing courts to come in and do things they are not equipped to do because we have been AWOL as Congress. The best thing we can do to win this war is have policies that allow us to effectively interrogate, detain, and prosecute terrorists without ceding the high ground. And this amendment is a start.

I am going to introduce every JAG memo written about the original policies. Their concern is we are putting our own people at risk.

This is General Rives, my current boss:

Should any information concerning the exceptional techniques—

And they were exceptional—

become public, it is likely to be exaggerated/distorted in both the U.S. and international media. This could have a negative impact on international, and perhaps even domestic, support for the war on terrorism. It could likewise have a negative impact on public perception of the U.S. military in general.

This was written 6 February 2003. He was foretelling what was going to happen. These are not ACLU lawyers. This is a Marine Corps general and a two-star general in the Air Force who dedicated their lives to defending their country and holding us up to be the great Nation we are.

I urge my colleagues to please adopt this amendment overwhelmingly. It will do a great service to future Presidents. It will be a great turning point in the war on terror. It is needed. It is a simple amendment. It uses the Army Field Manual as the bible for interrogation for lawful combatants and enemy combatants. You can write it the way you need to. It does not lock us into a position that would be undermining our efforts to get good intelligence. It simply will be a document that covers how we behave in every known situation from Guantanamo Bay to the battlefield in Afghanistan. It will be something that will help our troops understand what they can and cannot do. It will make us stronger as a nation.

The second part of the amendment is the most important. It says that we as a nation will do what the President said: We will treat everybody in our charge humanely whether they deserve it or not because, as Senator MCCAIN said, it is about us, it is not about them. And it is now time for Congress to speak. It will help us in court. When the courts understand that the Congress has come up with a plan in support of the administration to interrogate detainees, they will give great deference to that situation. When Congress is absent, they are going to be confused, and they are going to do some things they really do not want to do.

This is a very important moment in the war on terror. This brings us back into the light out of the darkness. It allows us to interrogate enemy combatants, unlawful combatants in a way to get good intelligence without undermining who we are as a people. It is necessary, it is legally necessary. It will strengthen our hand in court. It is very necessary to create certainty out of confusion for our troops.

One thing I can say with absolute certainty is that we have let the troops down when it comes to trying to give them guidance about what to do in very stressful situations. We are trying

to give them the armor they need to protect themselves from a terrible enemy. We are trying to give them the intelligence they need to get ahead of the enemy. The best thing we can do is give them the guidance they need to make sure we can win this war on terror and never lose the moral high ground.

I urge every person to think long and hard about this amendment. To vote no on this amendment, in my opinion, dramatically weakens us as a nation. To vote yes reinforces our values, provides good guidance to make sure we get good intelligence, and protects our own people from being prosecuted.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, it is an honor to serve in the same body with the Senator from Hawaii, a Congressional Medal of Honor winner, and with the Senator from Arizona because of his distinguished service in Vietnam. Whenever the Senator from Alaska, a pilot in World War II, who devoted most of his career here to understanding our defense policies, urges caution, I try to listen and pay attention. But I rise today in support of the amendment by the Senator from Arizona to the Defense appropriations bill, and I ask unanimous consent to be added as a cosponsor.

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

Mr. ALEXANDER. Mr. President, I have listened carefully to the debate about whether it is appropriate for Congress to set the rules on the treatment of detainees. I have listened carefully, but for me the question isn't even close.

The people, through their elected representatives, should set the rules for how detainees and prisoners under U.S. control are treated and interrogated. In the short term, the President can set the rules, but the war on terror is now 4 years old. We do not want judges making up the rules. We Republicans often say we don't like to see judges legislating from the bench. So for the longer term, the people should set the rules. That is why we have an independent Congress. That is our job. In fact, the Constitution says quite clearly that is what Congress should do. Article I, section 8, of the Constitution says that Congress and Congress alone shall have the power to make ''Rules concerning Captures on Land and Water.'' So Congress, as the Senator from South Carolina said, has a responsibility to set clear rules here.

But the spirit of this amendment is really one that I still hope the White House will decide to embrace. In essence, as has been pointed out, the amendment codifies military procedures and policies—procedures in the Army Field Manual and procedures regarding compliance with the Convention Against Torture signed by President Reagan. These amendments uphold or codify policies and procedures the administration says we are following today and intend to follow moving forward.

As the Senator from Arizona pointed out, his amendment would do two things: One, prohibit cruel, inhumane, or degrading treatment or punishment of detainees. It is in specific compliance with the Convention Against Torture that was signed by President Reagan. The administration says we are already upholding that standard when it comes to treatment of detainees, so this should not be a problem.

Secondly, the McCain amendment states simply that the interrogation techniques used by the military on detainees shall be those specified by the Army Field Manual on Intelligence Interrogation. The military, not Congress, writes that manual. We are told that the technique specified in the manual will do the job. Further, it is under revision, as has been pointed out, to include techniques related to unlawful combatants, including classified portions that will continue to give the President and the military a great deal of flexibility.

If the President of the United States thinks these are the wrong rules, I would hope he would submit new rules to Congress so that we can debate them and pass them. I made this same suggestion in July, but no alternative rule has been suggested so far. I am one Senator who would give great weight to the President's views on this matter.

This has been a gray area for the courts over time. In this gray area, the question is, Who should set the rules? In the short term, surely the President can. In the longer term, the people should, through their elected representatives. We are their elected representatives. It is time for us to act. It is time for us to set the rules. We do not want courts legislating from the bench and writing the rules. That leaves us to do our job.

In summary, it is time for Congress, which represents the people, to clarify and set the rules for detention and interrogation of our enemies. If the White House would prefer different rules, I hope the President will tell us what rules and procedures he needs to succeed in the war on terror.

If the argument is whether it is appropriate for Congress to set clear standards, I believe Congress should set standards and will vote to support the amendment of the Senator from Arizona.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise in support of the McCain amendment. There has been a lot of discussion about the new challenges we face in dealing with organized terrorist cells around the world. The complexity and the nature of those terrorist threats requires us to engage in ever more combat activity that is nonconventional. We want to make sure we do what we can to secure transportation and infrastructure, that we do what we can to deploy technology, that we improve our preparedness. But it does not change the fact that in dealing with terrorism our greatest asset or our greatest tool will be intelligence gathering. Intelligence gathering will require direct engagement with and interrogation of suspects, trying to gather information that can help us disrupt these networks.

We are trying to gather information that can help us prevent future attacks. That process of interrogation, needless to say, is complex and challenging. We have seen many of the problems and some of the abuses that have been documented by some of the previous speakers.

I think this calls out for a process that is more clear and better defined; interrogation tools, techniques, and procedures that we can be sure are applied consistently in the field. That is why I think this amendment is so important. That is why I think we have a fundamental obligation to support this amendment or at least some approach to clarify these processes, standards, and procedures used for interrogation.

I can think of two basic reasons that this is important and that it will benefit our troops and our country. First, by establishing clear lines, procedures, and process for interrogation, we help our own troops, whether working in the uniformed services or working in covert operations or other intelligence-gathering activities. We can be sure that they know what the allowances are, that they know what the process is, that they know what the procedure is, and, in effect, we provide them with appropriate protection and safeguards in doing their job.

In a similar way, we provide those individuals with protection in the field of combat should they be taken as a prisoner of war. We want to make sure our enemies do not have justification for using any interrogation techniques that we would consider to be improper, cruel, or inhumane.

First, we are providing protection and establishing this clarity. Second, I think we are sending an important message to our allies and our adversaries—a message that while the legal standards that are enshrined in the Constitution do not apply to everyone in the world, our commitment to these basic principles of life, liberty, and the pursuit of happiness, our commitment to basic principles of human dignity and human rights do apply and we must find ways to define these standards, to clarify this commitment, even in the area of interrogating enemy combatants and interrogating potential terrorists, suspected terrorists, in the field.

So we send a clear message to our allies and adversaries that our commitment to these principles is real, that our desire to establish uniform standards is real.

I do not know, not having the experience of some of my colleagues, whether this is the perfect standard, whether the requirements and the precise language in this amendment are ideal, but I think this is a fair-minded approach that allows the military itself, through its code of conduct, to establish these definitions that allows for the establishment of a classified annex to deal with covert operations, deal with the most sensitive of captives and the most sensitive of interrogations so that we are not undermining the intelligence gathering that we are attempting to facilitate.

In fact, the approach that is taken has been endorsed, as was indicated by the Senator from Arizona, by many who have had very close and intimate experience with this type of interrogation. In the letter that Senator MCCAIN entered into the RECORD there were two particular points that were made that I want to underscore, and that is, first, ''the abuse of prisoners hurts America's cause.'' I think that is just a fundamental and important underlying point in this debate, that prisoner abuse hurts our cause. It hurts the moral arguments we are trying to make, the political arguments we are trying to make, and it does put our own men and women serving in uniform or in intelligence-gathering operations at risk.

Second, the United States should have one standard for interrogating enemy prisoners that is effective, lawful, and humane. That point brings me back to the concern that we send a clear message to our allies and adversaries that our commitment to human dignity and human rights is universal.

So I am pleased to support the amendment. I think it is a very important first step. I think it gives the military the flexibility that it deserves, and I hope the military will use that flexibility well to add clarity, standards, process, and procedure that will enable us to continue to interrogate prisoners and continue to gather intelligence in dealing with these terrorist networks around the world, but do it in a way that is consistent with the intent, the principle, and the philosophy of our Constitution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I rise today in support of amendment No. 1977, which has been offered by Senator MCCAIN, the Presiding Officer, Senator GRAHAM, Senator HAGEL, Senator SMITH, and Senator COLLINS. First, let me commend Senator MCCAIN for the courage that he has shown, again, in offering this amendment. There is not a single person in Congress who can speak with more authority than Senator JOHN MCCAIN on the treatment of prisoners of war.

I have come to this floor many times to address this issue, but my voice is weak compared to his. He has lived this experience in a way that none of us ever have or ever will. I believe his voice should be listened to more than some because he has given so many years of his life to this country and suffered as a prisoner of war personally.

This should be a noncontroversial amendment. It really requires two very simple and straightforward things: First, that the treatment of detainees comply with the Army's Field Manual on Interrogation; and, second, that the United States may not subject anyone in our custody to torture or cruel, inhumane, or degrading treatment. It is that straightforward.

This amendment would affirm our Nation's very important, longstanding obligation not to engage in torture or other cruel treatment. This standard is enshrined in our U.S. Constitution and in several treaties which our Nation has adopted as the law of the land.

Just as important, this amendment would make the rules clear for our soldiers so they know what the standards are that they should follow in the treatment of detainees. We owe this to our troops. If they are going to risk their lives every day in defense of our country, we should give them standards of conduct that are clear and unequivocal.

The prohibition on torture and other cruel treatment is deeply rooted in the history of America. Our Founding Fathers made it clear in the Bill of Rights that torture and other forms of cruel treatment are prohibited.

These principles have even guided us during the times of great national testing. During the Civil War, President Abraham Lincoln asked Francis Lieber, a military law expert, to create a set of rules to govern the conduct of U.S. soldiers in the Civil War. The result was the Lieber Code. It prohibited torture and other cruel treatment of captured enemy forces. It really was the foundation for the Geneva Conventions.

After World War II, the United States took the lead in establishing a number of treaties that banned the use of torture and other cruel treatment against all persons at all times. There are no exceptions to this prohibition.

The United States has ratified these treaties, including the Geneva Conventions and the torture convention. They are the law of the land.

Twice in the last year and a half, I have authored amendments to affirm our Nation's longstanding position that torture and other cruel treatment are illegal. Twice the Senate unanimously approved my amendments. Both times the amendments were killed behind closed doors of conference committees. Both times these amendments, which I offered and which were accepted by the Senate, were stricken from the bill at the insistence of the administration.

As I understand it, the administration does not support Senator MCCAIN's amendment. I sincerely hope that after this debate, they will.

Why would the administration oppose an amendment that affirms our longstanding obligation not to engage in torture or cruel, inhumane, and degrading treatment? Sadly, it is because the actions that they have taken on this critical question have been unclear and inconsistent.

In early 2002, Alberto Gonzales, who was then-White House Counsel, recommended to President Bush that the Geneva Conventions should not apply to the war on terrorism. Colin Powell, former Chairman of the Joint Chiefs of Staff, who was then-Secretary of State, objected strenuously to Attorney General Gonzales' conclusion. He argued that we could effectively fight the war on terrorism and we could live by the Geneva Conventions, which have been the law of the land in America for over half a century.

Unfortunately, the President rejected Secretary Powell's wise counsel and instead accepted Attorney General Gonzales' recommendations. In February of 2002, he issued a memo determining that the Geneva Conventions would not apply to the war on terrorism.

Then the administration unilaterally created new policies on the use of torture. I am referring to, among other things, the well-known Bybee memo of August 1, 2002, which has been publicly disclosed. They have claimed that the President has the right to set aside the law that makes torture a crime. They have narrowly defined torture as limited only to abuse that causes pain equivalent to organ failure or death.

They claim that it is legal to subject detainees to cruel, inhuman, and degrading treatment even though Congress has ratified the torture convention, which explicitly prohibits cruel, inhuman, and degrading treatment. This fact was verified by Attorney General nominee Gonzales during confirmation hearings before the Senate Judiciary Committee, in response to a question which I asked him directly.

Despite all of this, the administration continues to insist that their policy is not to treat detainees inhumanely.

What does this mean? Recently, I asked Timothy Flanigan this question. He was the Deputy to White House Counsel Alberto Gonzales. Mr. Flanigan has been nominated to be the Deputy Attorney General, the second highest law enforcement official in the Nation. Mr. Flanigan said inhumane treatment is ''not susceptible to a succinct definition.''

I asked him whether the White House had provided any guidance to our troops on the meaning of inhumane treatment. He acknowledged that they had not.

I asked Mr. Flanigan about specific abuses. I asked him: would it be inhumane to beat prisoners or subject them to mock executions? He said, ''It depends on the facts and circumstances.''

I cannot imagine facts and circumstances in which it would be humane to subject a detainee to a mock

execution. Last week an editorial in the Washington Post called Mr. Flanigan's answers to my questions, ''evasive legalisms in response to simple questions about uncivilized conduct.''

How are our service men and women supposed to know how to treat detainees when high-ranking administration officials do not seem to know or refuse to respond to these direct questions?

The administration acknowledges that some people held by our Government have been mistreated. Some have been tortured. They say these abuses were committed by a few bad apples, rogue soldiers on a night shift.

But is it any wonder that people have been abused when the administration and Congress do not make it clear that American policy prohibits subjecting detainees to cruel and degrading treatment? Is it any wonder that people have been abused when we refuse to repudiate un-American practices such as beating detainees? The administration should not point the finger of blame at our troops for the logical consequences of muddled and often contradictory policies.

I have been to Iraq. I have spent time with our troops. I have been humbled by their courage and sacrifice. I have visited Walter Reed Hospital many times. I have spoken with young soldiers who have suffered horrible injuries in the war, and I have attended funerals for soldiers who lost their lives in this war, many from my own home State.

Our troops around the world and their families at home deserve our respect, admiration, and support.

Just a few weeks ago, a brave U.S. serviceman stepped forward to say that he and other American soldiers need clear rules and guidance on how to deal with detainees. CPT Ian Fishback is a graduate of West Point. He served in combat both in Afghanistan and Iraq. He was so disturbed by what he had experienced that he wrote to our colleague, Senator MCCAIN. The letter is now public. It was published in the Washington Post last week.

Senator MCCAIN entered part of the letter into the record earlier today. Let me read a little more of the letter, which speaks so powerfully and eloquently to our soldiers' need for guidance and leadership. Listen to what Captain Fishback wrote:

> For 17 months I tried to determine what specific standards governed the treatment of detainees. . . . Despite my efforts, I have been unable to get clear, consistent answers from my leadership about what constitutes lawful and humane treatment of detainees. I am certain that this confusion contributed to a wide range of abuses including death threats, beatings, broken bones, murder, exposure to elements, extreme forced physical exertion, hostage-taking, stripping, sleep deprivation and degrading treatment. I and troops under my command witnessed some of these abuses in both Afghanistan and Iraq.

This administration should stand by the time-honored Geneva Conventions and the torture convention, rules that have served us well in the past, rules that our soldiers are trained in and understand. To replace them with vague directives to treat detainees humanely fails to provide basic guidance that our troops desperately need.

Listen to what Captain Fishback also wrote:

> I can remember as a cadet at West Point, resolving to ensure that my men would never commit a dishonorable act, that I would protect them from that type of burden. It absolutely breaks my heart that I failed some of them in this regard.

It breaks my heart to think that this soldier, risking his life for America in Afghanistan and Iraq, is now reaching out to us because we have failed to provide him with guidance. I am thankful that Senator MCCAIN has stepped forward, along with you, Mr. President, and many others in this Chamber, to give him that guidance.

Captain Fishback is an honorable man. Like the overwhelming majority of the fine men and women who serve our country, he has not failed. We have failed—to give him clear direction in his conduct as a soldier.

The administration has failed to set clear rules for the treatment of detainees. We need to step in and clarify these with the amendment offered by Senator MCCAIN. Cruel, inhuman, and degrading treatment are prohibited. The Army Field Manual governs the treatment of detainees. Senator MCCAIN's amendment will make that clear.

In the past, the administration has opposed amendments that affirm that cruel, inhuman, or degrading treatment is illegal because they ''would have provided legal protections to foreign prisoners to which they are not now entitled.''

But the administration is not correct in this assertion. Cruel, inhuman, or degrading treatment is already prohibited by the torture convention.

Their reasoning is revealing, however. They do not seem to understand the real issue at stake in this debate. This is not about legal protections for foreign prisoners. It is about who we are as a people. Torture is not American; abusing detainees is not the American way. Our brave men and women in uniform understand this, and the plaintive plea of Captain Fishback makes that clear.

I correspond with another soldier who served in Iraq and started sending me e-mails late at night about what was really happening on the ground. He keeps in touch with me now from time to time. He recently wrote to me and said:

> We need to go back toward a strict application of the Geneva conventions. That is where our honor lies and that is what I was taught since the day I joined the service.

Retired RADM John Hutson served our country for 28 years, and for the last 3 years of his career he was the Judge Advocate General, the top lawyer of the Navy. He worked with me on the amendments I authored. He supports Senator MCCAIN's amendment. In a letter to me he wrote:

> Clarion opposition to torture and other abuse by the U.S. will help protect U.S. troops who are in harm's way.

Former Congressman Pete Peterson, a good friend of mine and many in this body, was also a prisoner of war in Vietnam, like Senator MCCAIN. He was in prison for 6.5 years.

In a letter to me in support of our efforts he wrote:

> Congress must affirm that America stands by its moral and legal obligation to treat all prisoners, regardless of status, as we would want the enemy to treat our own. Our courageous men and women deserve nothing less.

Let me close finally by a quote from Captain Fishback's letter.

> Some argue that since our actions are not as horrifying as Al-Qaeda's, we should not be concerned. When did Al Qaeda become any type of standard by which we measure the morality of the United States? We are America, and our actions should be held to a higher standard, the ideals expressed in documents such as the Declaration of Independence and the Constitution. . . .If we abandon our ideals in the face of adversity and aggression, then those ideals were never really in our possession. I would rather die fighting than give up even the smallest part of the idea that is ''America.''

We are so fortunate to have men of his dedication and character serving our country in uniform. We owe it to him, we owe it to the hundreds of thousands of men and women who serve us every single day and risk their lives, to set clear rules so they know how to treat detainees in custody.

I urge my colleagues to support the amendment of Senator MCCAIN. I yield the floor.

Mr. OBAMA. Mr. President, I support the amendment offered by the senior Senator from Arizona. I commend Senator MCCAIN for his leadership on this important issue. This amendment prohibits the cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the U.S. Government. In other words, it outlaws the torture of prisoners by agents of the United States, regardless of their geographic location.

I am, and always have been, opposed to the use of torture. I believe that our brave men and women serving in the Armed Forces share this view. Now more than ever, we must make it absolutely clear to our allies and our enemies that the United States does not and will not condone this practice. This amendment does that in no uncertain terms. It acknowledges and confirms existing obligations under our own Constitution and the United Nations Convention Against Torture.

Let me be clear on another point. I am committed to fighting terrorism and protecting our citizens and troops at home and abroad. I have the utmost respect, gratitude and admiration for our troops who are fighting on the frontlines of the War on Terror, and I have no intention of undermining the important job that they do.

But the use of torture does not enhance our national security. In fact, senior U.S. military officers have argued that practicing torture can place

U.S. troops in grave danger—especially if they are taken prisoner. In working to keep our Nation and troops safe, we must not lose sight of this critical truth.

The United States should set an example for the international community. Senator MCCAIN's amendment reaffirms a fundamental value of the American people—that torture is morally reprehensible and has no place in this world. I am proud to support this affirmation, and I urge my colleagues to do the same.

Mr. LEAHY. Mr. President, I strongly support Senator MCCAIN's amendment to provide clear guidance for the treatment of detainees in U.S. custody. This administration has steadfastly refused to address the black mark on our Nation caused by its interrogation policies and the resulting abuse of detainees. Congress needs to take action.

Our credibility and reputation as a world leader in human rights suffers from our unwillingness to openly address the flaws in our system. More importantly, the failure to provide clear guidance on the treatment of detainees puts our own troops at risk and undermines their efforts in Afghanistan and Iraq. I commend my colleagues across the aisle who are attempting to address this problem, despite resistance from members of their own party and the strong opposition of the White House. The President has threatened to veto any legislation that would regulate the treatment of detainees, claiming that it would impinge on his Commander-in-Chief authority. I fail to see how a bill requiring the humane treatment of detainees—the same treatment the President claims they now receive—would impinge on his authority in any way.

It is Congress's right under the Constitution to issue regulations governing the armed forces. This was something I asked Chief Justice Roberts at his confirmation hearings, and he agreed ''that Congress can make rules that may impinge upon the President's command functions.'' He answered, ''Certainly . . . the Constitution vests pertinent authority in [this] area in both branches. The President is the Commander-in-Chief . . . On the other hand; Congress has the authority to issue regulations governing the armed forces, another express provision in the Constitution.''

Senator GRAHAM said on the floor this morning that, ''Congress has been AWOL when it comes to the war on terror in terms of interrogation, detention and prosecution, and we've done it in a way to weaken our Nation.'' I agree with my friend, the Senator from South Carolina. Without congressional action, the problem of prisoner abuse will continue to fester.

We continue to learn of abuses from press reports and the court-ordered release of government documents in response to Freedom of Information Act, FOIA, litigation. Documents that were recently made public by the FOIA case demonstrate why Senator MCCAIN's amendment is necessary.

These documents reveal a troubling pattern of abuses that occurred because soldiers did not know what was acceptable under this administration's vague detention and interrogation policies. Several of the documents are transcriptions of interviews of military personnel in Iraq that show a systematic failure of the Pentagon to properly train soldiers on how to treat detainees. One report describes soldiers who, because of a lack of guidance and training from their command, engaged in ''interrogations using techniques they literally remembered from movies.'' Another document describes the shooting of an Iraqi detainee in U.S. custody. The report concludes that ''this incident could have been prevented if [the soldier] had better training.''

Another report, released last week by Human Rights Watch and based on firsthand accounts of soldiers in the 82nd Airborne Division, details the widespread abuse of Iraqi detainees by soldiers at Camp Mercury, a forward operating base near Falluja, Iraq. The report states that detainees were severely beaten and mistreated from 2003 through 2004, even after the photos from Abu Ghraib became public. The witnesses claim that detainees were abused at the request of military intelligence personnel as part of the interrogation process, but also claim that the abuse occurred simply as a way for troops to ''relieve stress.'' One soldier allegedly broke a detainee's leg with a baseball bat. In another incident, detainees were stacked into human pyramids and denied food and water. It is time for this administration to finally acknowledge that such incidents were not the isolated acts of a few bad apples. These horrific acts were not isolated incidents on the night shift at Abu Ghraib. Unfortunately, similar acts occurred at locations throughout Iraq and Afghanistan.

A group of 28 senior military officers, including General John Shalikashvili, recently wrote to Senator MCCAIN in support of his amendments addressing detainee treatment. That letter stated, ''The abuse of prisoners hurts America's cause in the war on terror, endangers U.S. servicemembers who might be captured by the enemy, and is anathema to the values Americans have held dear for generations. Our servicemembers were denied clear guidance, and left to take the blame when things went wrong. They deserve better than that.'' I hope the President will consider these words before he vetoes a bill that contains Senator MCCAIN's amendment.

Mr. HAGEL. Mr. President, I rise in support of Senator MCCAIN's amendment No. 1977 regarding the treatment of individuals who are in the custody or control of the United States.

I cosponsored this amendment because the men and women making sacrifices to defend our country deserve clear standards for the treatment of detainees under U.S. control. It is the responsibility of both the Executive and Congress to provide clear guidance and leadership that will direct the actions of our troops.

We have failed to meet this obligation. Soldiers continue to report that the lack of clear guidance has created an atmosphere of confusion and uncertainty around the world. Our failure to confront this issue puts our troops at greater risk of abuse and mistreatment and undermines our credibility.

This amendment will strengthen our ability to fight those who threaten the United States. This amendment codifies into law that the Army Field Manual must be used as the standard for interrogations. In addition, the amendment codifies that the U.S. will not subject detainees to cruel, inhumane and degrading treatment.

This is a commonsense amendment that protects our troops and upholds the standards that this country has held to since the beginning of our Republic.

I urge my colleagues to vote in support of this amendment.

Mrs. FEINSTEIN. Mr. President, I rise in support of amendment No. 1977, offered by my colleague, Senator MCCAIN.

This amendment would bring much-needed clarity to the rules governing how Americans treat captured prisoners and detainees.

It will make clear that the Geneva Conventions apply to all people held in the custody of the Department of Defense.

It provides a workable definition of ''cruel and inhumane,'' based on the rules which govern how we treat criminals in the United States, and based firmly in the constitutional prohibitions of cruel and unusual punishment.

Most importantly, it sets rules that are clear, simple and in accord with basic American values.

First, let me make clear my view that in this modern world of asymmetric warfare, non-state actors, and unconventional threat, there is an absolute necessity to have a program to securely hold prisoners and effectively interrogate them to provide timely intelligence.

But in my judgment, the current system is not working.

Over the course of the past 4 years, there has been a great deal of confusion over the policies and practices of the United States towards individuals the Government has taken into custody.

This confusion has been evident at the highest levels of decisionmaking at the Pentagon, with memoranda authorizing this technique or that technique being issued and rescinded within weeks of one another.

The confusion has been noted here in the Senate. I sit on two committees with jurisdiction, and have sat through hours and hours of hearings and briefings—our Nation's policy with respect to detainees and prisoners of war is still unclear to me.

Frankly, the administration's repeated statements about ''wherever

possible adhering to law'' are confusing and unhelpful.

And the confusion has filtered down to the front lines.

Seventeen months ago, enlisted members of the 82nd Airborne Infantry Division—honorable men risking their lives in Iraq—asked their commanding officer what the rules were for the treatment of prisoners.

For 17 months, their commander, CPT Ian Fishback, diligently searched for the answer up and down his chain of command. Here is what he has found, and I quote:

> We've got people with different views of what ''humane'' means and there's no Army statement that says ''this is the standard for humane treatment for prisoners to Army officers.'' Army officers are left to come up with their own definition of humane treatment.

Captain Fishback and his men have a right to clear guidance. Their sacrifices entitle them to be allowed to do their job. An infantryman should not need to be a graduate of a law school to know what to do with a prisoner.

What this amendment does is to provide clarity.

It is incumbent on Congress to provide this clarity. In fact, we have a constitutional mandate to do it.

Article VII, section 8 of the Constitution states that Congress shall have the power to ''make Rules concerning Captures on Land and Water,'' and also ''To make Rules for the Government and Regulation of the land and naval Forces.''

Our men and women in combat badly need this legislation. But there is more at stake here than immediate military necessity.

Our soldiers and our Nation have a long and honorable tradition of ethical behavior. For more than 200 years we have prided ourselves on being different than our adversaries in war. Simply put, there are some things that Americans do not do, not because it is illegal, or some lawyer says we cannot, but because it is wrong.

The laws of war, codified in the Geneva Conventions, represent a bare minimum of acceptable behavior toward captives. The United States has consistently championed the Geneva Conventions for over a century, knowing that our behavior is a beacon to the world, and that our adherence to principle—as well as projecting American values—saves American lives.

I am not naïve. I do not expect our current enemy to respect the Geneva Conventions. Our captured troops cannot expect humane treatment at the hands of al-Qaida. But make no mistake—the eyes of the world are still on us, and our policies have real consequences.

Even now, millions of young Muslims around the world are evaluating the United States. They are deciding whether to take up arms against us, or whether to work with us towards a peaceful resolution with liberty and justice for all. We must show them, clearly, emphatically, that the rhetoric of democracy and freedom is not empty. We must show them that we are a government of laws, clearly written, openly promulgated and fairly enforced.

Captures and interrogations are part of war and, no less than other tools of war, must be wielded intelligently, humanely, and within a set of rules for warfare that govern all who serve in uniform—whether privates or generals, seamen or admirals.

Our men and women in uniform, serving in Afghanistan, Iraq and at Guantanamo Bay, have the right to clear, direct and lawful leadership.

This amendment is good policy, is just, and is long overdue.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senator from Illinois, Mr. DURBIN, be added as a cosponsor.

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

Mr. MCCAIN. Mr. President, first I thank my friend and colleague from South Carolina for his comments in support of this amendment. He does occupy a unique position in this body, having served 20 years—6½ years on active duty as an Air Force lawyer and member of the JAG Corps, and remains in the Reserves to this day. He obviously brings a perspective to this issue which is very important.

I think the Senator from South Carolina described the confusion that existed over a period of time about this whole issue of treatment of prisoners. There was a set of instructions issued which were in effect for a couple of months, which were strongly objected to by the uniformed legal corps in the Pentagon. Yet their concerns were overridden.

The Senator from South Carolina quoted one of them. Another one was by RADM Michael Lohr, the Navy's Judge Advocate General. He said the situation at the American prison in Guantanamo, Cuba, might be so legalistically unique that the Geneva Conventions and even the Constitution did not necessarily apply. But, he asked,

> Will the American people find we have missed the forest for the trees by condoning practices that, while technically legal, are inconsistent with our most fundamental values?

General Rives said if the White House permitted abusive interrogations at Guantanamo Bay, it would not be able to restrict them to that single prison. He argued that soldiers elsewhere would conclude that their commanders were condoning illegal behavior. And that is precisely what happened at Abu Ghraib after the general who organized the abuse of prisoners at Guantanamo went to Iraq to toughen up the interrogation of prisoners there.

I think it is clear that the White House ignored those military lawyers' advice a couple of years ago. We now have, thanks to the yearlong effort of the Senator from South Carolina, those communications of deep concern to every uniformed JAG in the Department of Defense, about the issuance of instructions which basically violated our commitment to the Geneva Conventions.

In order to have the record complete, a couple of months later those were rescinded and different orders were issued at that time. But what if you are at the end of the chain and you get these kinds of mixed messages?

So I thank the Senator from South Carolina for pointing out from his unique perspective how important this is, since it is the men and women who are in the JAG Corps who are responsible for prosecuting those who violate Geneva Conventions, and they need clear guidance; or defending someone who is accused of violating them, as our men and women of the military are entitled to defense just as they are subject to prosecution.

Again, I thank the Senator from South Carolina. I appreciate the defense of the Senator from Alaska of the administration's position on this issue. I do not think he has been well informed by the administration, particularly concerning the Army Field Manual.

The Army Field Manual has a classified section which would not be available to anyone except for those who have a need to know. The Army Field Manual has been used for decades. The Army Field Manual is being revised as we speak to try to meet the new challenges we face. But the Army Field Manual, I am confident, will be in keeping with the fundamental commitments we have made.

All my career I have supported the rights and prerogatives of the Commander in Chief. We need a strong President, and in wartime this is more important than ever. I understand the administration would want to preserve the President's flexibility and wartime powers, and I do not believe that we can afford to have 535 Secretaries of State, Secretaries of Defense, or even Presidents of the United States.

I would like to point out the Congress not only has the right but the obligation to act. Article I, section 8 of the Constitution of the United States, clause 11:

> To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water[.]

I repeat:

> . . . make Rules concerning Captures on Land and Water[.]

Someone is going to come down to the floor and say that applied back in the time of the Framers of the Constitution; it didn't apply to today. At least from my point of view, unless there is an overriding need to change the Constitution of the United States—if that clause of the Constitution no longer applies, then lets amend the Constitution and remove it; otherwise, lets live by it.

The Congress has the responsibility:

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water[.]

I do not see how anyone could view this as an unwarranted intervention in an issue such as this. The courts, as the Senator from South Carolina pointed out so well, are asking us—that well-known liberal judge, Justice Scalia, has said we need the Congress of the United States involved in this issue. We, the courts, cannot do it ourselves.

As the Senator from South Carolina pointed out, if we do not fulfill our constitutional role, we are negligent. We owe it to our troops and our country to speak on this issue.

I very much respect my friend, the Vice President of the United States, Vice President CHENEY. He and I have been friends for many years. I respect the way that he carefully guards the prerogatives of the President. But on this issue, I hope he and others would understand that we are dutybound to take action.

I would like, again, to refer back to Captain Fishback. He is what I view as the tip of the iceberg that exists in the military today. They know how important this war on terror is. They are the ones who are fighting it. Captain Fishback served in Afghanistan and in Iraq, and the ones I hear from are men and women in the military who have a very strong commitment to winning the war on terror. They have laid their lives on the line to win it. But they want clear, unequivocal guidelines as to how to treat prisoners of war.

I would like to believe that this is the last war in which the United States will ever be involved. I would like to believe that from now on, after we win this war on terror, we will have peace and the United States will never send its men and women in harm's way again.

History shows me otherwise. What happens in the next conflict when American military personnel are held captive by the enemy and they make the argument, with some validity, that we have violated the rules of war? What happens to our men and women in the military then?

There are some who will say they wouldn't respect the rules of war, anyway. If they are not sure they are going to win, as the Germans weren't in World War II, they might treat our prisoners according to certain standards if we insist upon those standards.

I think there is a lot at stake. I respect the position of the administration, that these should be under the authority and responsibility and would erode the flexibility of the President of the United States. I don't believe so.

This amendment basically restates what we have been practicing for certainly all of the 21st and the 20th centuries.

I think we owe it to the people, these brave young Americans such as Captain Fishback, who want and deserve a clarification in the way they can carry out their responsibilities and duties as they travel into harm's way.

I thank the Senator from New Hampshire, the Senator from Tennessee, the Senator from Illinois, and my friend from South Carolina for their eloquent statements on this issue.

I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

Mr. STEVENS. Mr. President, this Senator doesn't agree with anything that has been said about the applicability of this provision to anyone in the military uniform. Most of the speakers have talked about men and women in the armed services. The amendment goes much further than that.

But first, the problem is it requires the field manual to list every type and means of interrogation. Thousands of pages will be required. People will be prosecuted in military courts if they don't know every single one of them, if they even cross the line by accident. This idea of listing all of the possible ways to interrogate a person is impossible. I say that should be changed. Maybe they should issue from time to time additional items to go in the field manual. But to require that no one can use a means of interrogation not listed in advance when we are involved in a war on terror and we are dealing with terrorists is wrong.

Beyond that, this deals with any person—not any military person. The Geneva Conventions were originally intended to deal with military prisoners. This is dealing with anyone who is intercepted now anywhere in the world who, regardless of nationality or physical location, is in custody or physical control of the United States because a person who is American happens to be there.

Again, I mention these teams I have met with, and I respect multinational teams. This, in effect, says that an American is responsible for anything done by any member of that team. That, to me, is wrong.

What is more, I think it is wrong to presume there is no place in this country or in the operation of this country where we should not have the ability to deal with terrorists on their own ground.

These are vicious people, suicidal people. I do not think they should be accorded the rank and treatment of men and women in uniform from other nations. That is what this amendment does. I shall oppose it. I may be all alone, but I shall oppose it because I think there is a place in our operations against individuals involved in the war on terrorism where we deal with them as they deal with us.

These are not military people. They may not even be American nationals who are working for us in an undercover way, but this says we are responsible for treating all these people according to the Geneva Conventions and according to processes listed in the U.S. Army Field Manual. That is wrong. That is all simply wrong, and I shall oppose the amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The Journal clerk proceeded to call the roll.

Mr. GRAHAM. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. GRAHAM. Madam President, I ask unanimous consent to set aside the pending amendment.

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

AMENDMENT NO. 2004

Mr. GRAHAM. Madam President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for himself and Mr. MCCAIN, proposes an amendment numbered 2004.

Mr. GRAHAM. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To authorize the President to utilize the Combatant Status Review Tribunals and Administrative Review Board to determine the status of detainees held at Guantanamo Bay, Cuba)

At the appropriate place, insert the following:

SEC. ____.(a) AUTHORITY TO UTILIZE COMBATANT STATUS REVIEW TRIBUNALS AND ADMINISTRATIVE REVIEW BOARD TO DETERMINE STATUS OF DETAINEES AT GUANTANAMO BAY, CUBA.—The President is authorized to utilize the Combatant Status Review Tribunals and a noticed Administrative Review Board, and the procedures thereof as specified in subsection (b), currently in operation at Guantanamo Bay, Cuba, in order to determine the status of the detainees held at Guantanamo Bay, including whether any such detainee is a lawful enemy combatant or an unlawful enemy combatant.

(b) PROCEDURES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the procedures specified in this subsection are the procedures that were in effect in the Department of Defense for the conduct of the Combatant Status Review Tribunal and the Administrative Review Board on July 1, 2005.

(2) EXCEPTION.—The exceptions provided in this paragraph for the procedures specified in paragraph (1) are as follows:

(A) To the extent practicable, the Combatant Status Review Tribunal shall determine, by a preponderance of the evidence, whether statements derived from persons held in foreign custody were obtained without undue coercion.

(B) The Designated Civilian Official shall be an officer of the United States Government whose appointment to office was made by the President, by and with the advise and consent of the Senate.

(3) MODIFICATION OF PROCEDURES.—The President may modify the procedures and requirements set forth under paragraphs (1) and (2). Any modification of such procedures

or requirements may not go into effect until 30 days after the date on which the President notifies the congressional defense committees of the modification.

(c) DEFINITIONS.—In this section:

(1) The term ''lawful enemy combatant'' means person engaging in war or other armed conflict against the United States or its allies on behalf of a state party to the Geneva Convention Relative to the Treatment of Prisoners of War, dated August 12, 1949, who meets the criteria of a prisoner of war under Article 4 of that Convention.

(2) The term ''unlawful enemy combatant'', with respect to noncitizens of the United States, means a person (other than a person described in paragraph (1)) engaging in war, other armed conflict, or hostile acts against the United States or its allies, regardless of location.

Mr. GRAHAM. Madam President, I thank Senator STEVENS for allowing me to do this. I appreciate that we have a busy day.

I totally understand where he is coming from about the interrogation amendment. I come out on a different side. This amendment deals with the combat status review procedure at Guantanamo Bay. I think it is very necessary. I think it strengthens what the administration is trying to do when it comes to enemy combatants. I think it helps the administration in court and is good policy for the country.

No. 1, I totally agree with the President that a member of al-Qaida should not be given Geneva Conventions status. I say to my friend from Alaska that Senator MCCAIN's amendment doesn't confer Geneva Conventions status on enemy combatants. It standardizes the interrogation techniques. The Army Field Manual has a section for lawful combatants, those covered under the Geneva Conventions, and it will have a provision for unlawful combatants. Al-Qaida should not be given Geneva Conventions status. The Geneva Conventions and the signatories to the convention set the rules for the conduct of war. An unlawful enemy combatant is someone who goes around the battlefield without a uniform, doesn't represent a nation—a terrorist, for lack of a better word. They do not deserve the protection of the Geneva Conventions because they are cheating. But they do, in my opinion, deserve what the President said—not so much because they deserve it but because it is about who we are.

The President said even enemy combatants—members of al-Qaida—will be treated humanely. When we capture somebody on the battlefield—throughout the world because the whole world is the battlefield in the war on terror—most of the people we are dealing with are not part of the uniformed force, not like the Iraqi Army.

The President said early on these people will be humanely treated but they will not be given Geneva Convention status. He is absolutely right. When we catch someone, say, in Afghanistan, who is a member of al-Qaida or some other terrorist network, certain people, once screened, go to Guantanamo Bay. The people at Guantanamo Bay have been participating in the allegations, or they have been participating in terrorist activities, supporting terrorist organizations as an unlawful enemy combatant. They are not uniformed soldiers.

We are reviewing everyone that comes to Guantanamo Bay to see if they deserve the status ''enemy combatant.'' The term ''enemy combatant'' came out of World War II when we had a Supreme Court case recognizing that term for German saboteurs who landed, I think, in Florida and were trying to do sabotage throughout the United States. These six or seven Germans were not in uniform. They were tried by a military commission.

We have a military commission at Guantanamo Bay that I totally support. And I think enemy combatant status was a result of that Supreme Court case. They were given that determination.

What we are trying to do is streamline interrogation techniques to deal with both lawful and unlawful combatants. That helps our troops, gives them guidance.

The second thing we are doing with my amendment is legitimizing, through congressional action, what the administration has done at Guantanamo Bay. The administration, in my opinion, has put together a very good, thorough process to look at each person that comes to Guantanamo Bay to determine whether or not they should be classified as enemy combatants because if they are classified as enemy combatants, they can be detained indefinitely and taken off the battlefield.

The due process rights afforded an enemy combatant have been up to the Supreme Court, and the Supreme Court, for the most part, has blessed the procedure. There have been some concerns expressed by the Court.

My amendment tries to, one, legitimize what the administration has created at Guantanamo Bay in terms of a review process to determine who is an enemy combatant and who is not. We made two small changes. We have learned in the past that sometimes people have been because of a single statement made, while in the hands of a foreign agency, a foreign country, that was given under duress. The amendment says that if a civilian is to determine enemy combatant status in a statement from a foreign interrogation, you have to prove that the statement was not unnecessarily coerced. Most Americans, I think, agree with that, and the people at Guantanamo Bay agree with that.

Second, the civilian who will determine from the appeal process whether or not the enemy combatant status, which is reviewed annually, should be held, would be appointed by the Senate as a Presidential appointment. Gordon England is doing it now, and he is a Presidential appointee. That continues the trend. I think it would be good to have the Senate involved.

What does this mean, very briefly? It means we can go to the world and say we have a procedure in place at Guantanamo Bay that will determine who an enemy combatant is and that these procedures are blessed by the courts, they are blessed by the Congress, and they are blessed by the administration. It would be good to be able to say, as a nation, that all three branches of Government—the executive branch, the judicial branch and the legislative branch—have all agreed on procedures to take enemy combatants off the battlefield and give those people who are suspected of being enemy combatants due process rights consistent with whom we are as a people and give enough flexibility to the military to make sure these people do not go back to the fight.

The truth is, several hundred have been captured and released. The process is working very well at Guantanamo Bay. I compliment the administration for setting up a combat status review process that has been changed a couple of times. It is eminently fair. This amendment blessed that process. It has two small changes. It would strengthen the process, and it would end this never-ending court debate about what to do.

The courts have been telling us, Congress, if you got involved, it would help us figure out what we should be doing. Justice Scalia, as Senator MCCAIN indicated, screamed out, in a dissenting opinion granting habeas corpus rights to enemy combatants, that the courts are ill-equipped to run this war. Now, with this amendment, the Congress will bless what the administration has put in place, making small changes which will strengthen the administration's hands in the court. The courts will feel more comfortable ratifying this process, and we will be a united nation, a united front in all three branches of Government when it comes to dealing with enemy combatants.

It is very important that anyone who engages in unlawful enemy combatant activities against this Nation be taken off the battlefield and kept off the battlefield as long as necessary to make us safe. They deserve a certain amount of process because whom we are as a people and the process we are blessing gives them very adequate due process rights.

This amendment strengthens those rights. They deserve to be taken off the battlefield, and people engaging in unlawful enemy combatant activities should be taken off the battlefield as long as necessary to protect our country.

Second, they deserve to be prosecuted in some instances. There are three things we are trying to accomplish. We are trying to standardize interrogation techniques to protect our own troops and have a one-stop shopping for what the rules are. That is through Senator MCCAIN's amendment. We are trying to keep the moral high ground, as expressed by the President,

to say we are not torturing people, we are not going to treat people inhumanely because that weakens us. The bottom line, it is not the right way to get good information and weakens us. The more standardization the better.

When it comes time to keep people off the battlefield, with this amendment we are stronger as a nation because Congress will have blessed what the administration has done.

In that regard, I offer this amendment as a way to bring clarity to a situation that is very important in the war on terror. We need to keep enemy combatants, once they have been lawfully determined to be an enemy combatant, off the battlefield as long as it takes to secure this Nation. This amendment helps to do that.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. Madam President, I am informed there are objections from Members of the Committee on Armed Services to this amendment. I urge them to come over and defend their position.

This Senator was prepared to accept the amendment. It may be subject to a point of order. I am not sure. I do believe there are detainee items in the House-passed bills that would be germane under the circumstances, but it is another example, I might say, of the problems we get into when items that pertain to legislation end up on appropriations bills.

We are not really prepared to debate the amendment. I urge Members of the Committee on Armed Services who wish to do so to debate this amendment.

My only question is—I know the Senator is an extremely good attorney—has the phrase ''unlawful enemy combatant'' been used in any other portion of our laws of the Geneva Conventions?

Mr. GRAHAM. Yes. It is in the Geneva Conventions. There is a section about unlawful enemy combatant, illegal enemy combatant.

The conventions are set up to confer status on signatories and to make sure that people who engage in unlawful activity are not covered. The people who wear civilian clothes that go in the population and engage in terrorist activity have never been covered under the convention. Under the convention, that is the definition they are giving.

The administration has used the term that has been legitimized by the courts for quite a while now in international law. In the review process at Guantanamo Bay, they will take the person off the battlefield. They have to make a case whether they fit the definition of enemy combatant. Each year they can challenge the designation. What we are doing in this amendment is basically blessing that procedure, requiring two more things.

One, the idea that the Senate will confirm the person who will ultimately have the release authority or the appeal authority to enemy combatant status; and two, prohibit the use of a single statement to hold somebody as an enemy combatant who was in a foreign government's hands, unless we can show the statement was not a result of torture.

We have learned from our experience at Guantanamo Bay that would be a good change.

Mr. MCCAIN. Will the Senator yield?

Mr. GRAHAM. Yes.

Mr. MCCAIN. Does the Senator know how many detainees have been brought to trial in Guantanamo Bay?

Mr. GRAHAM. Of all the people we have detained—over 500—no one has been brought to trial yet. Two will be brought to trial in November.

One of the reasons that we cannot bring people to trial is because the Federal courts have issued a stay on prosecutions that has now been lifted. We are moving forward.

There is another Supreme Court case dealing with the due process rights of determining whether a person is an enemy combatant. The procedure is in place at Guantanamo Bay and has been generally blessed by the Court because they have been stayed on those proceedings, too.

Mr. MCCAIN. If the Senator will yield, aren't there two different Court decisions now that are in direct contravention of each other as to the disposition of these cases?

Mr. GRAHAM. Yes there is.

Mr. MCCAIN. Could the Senator describe those.

Mr. GRAHAM. There was a stay by Federal district judge, staying military commission trials. The DC Circuit Court of Appeals overrode the lower court. That has gone up to the Supreme Court right now. I am confident the Supreme Court will legitimize military commissions, maybe with some changes.

This amendment deals with detaining somebody who is not being prosecuted yet, who may be prosecuted, but keeping them off the battlefield because we have determined they are an unlawful enemy combatant. The review process to make that determination I feel very comfortable with. And there are some small changes in the amendment. The courts have told us this is an area where Congress needs to act. The courts have many cases, not just one, challenging the Guantanamo Bay procedures and determining unlawful enemy combatant. Justice Scalia said in the dissenting opinion, if this were an area where Congress spoke, the courts would welcome their involvement.

Mr. MCCAIN. If the Senator will yield further for a question, I guess my fundamental question is, aren't things in one heck of a mess?

Mr. GRAHAM. The legal status of military commissions and the combat status review process are in legal limbo unnecessarily.

If you read these opinions, they are a hodgepodge of different dissenting and concurring opinions. The one common theme is the courts are suggesting to Congress we get involved.

When it comes to combat status review, I am totally convinced, after talking with now Chief Justice Roberts, this would be an area where the courts would welcome congressional involvement. He said to me in the hearings that the President or the executive branch is at its strongest when they have the implied or express support of the Congress.

So the purpose of this amendment, if I may say very briefly, is for Congress to legitimize what is going on at Guantanamo Bay about determining enemy combatant status, legitimizing that review process by making some changes. If we would do that, I am convinced the courts would welcome that involvement and a lot of this litigation would end overnight.

Mr. STEVENS. If the Senator will yield, has this matter been discussed in the Committee on Armed Services?

Mr. GRAHAM. I have discussed it with one of the cosponsors of the amendment, Senator WARNER, yes. I have been to Guantanamo Bay with Senator WARNER and others, where we have talked about this. Yes, sir, I am very sure that the chairman knows about this because he is a cosponsor of the amendment.

Mr. STEVENS. I say to the Senator, that is another question. We were prepared to accept the amendment because—I don't claim expertise in this area; it is not within our jurisdiction. It is legislation on an appropriations bill, but I don't intend to raise an objection to it.

Has this been discussed, on a bipartisan basis, in the committee?

Mr. GRAHAM. I was under the assumption the amendment was going to be accepted, as you were, and now I have been told there are some concerns from the minority on the committee. I have talked extensively about these series of amendments. They all work in conjunction with each other. Senator MCCAIN's amendment standardized interrogation techniques and what we as a people want to live by—we do not want to torture people. We are not going to torture people.

My amendment standardizes and makes small changes to the determination of who is an enemy combatant and who is not, because you keep people at Guantanamo Bay indefinitely under this procedure. It needs to be blessed by Congress. The third thing we do, later on, is deal with military commissions, actually how you try these people.

So I was under the understanding, I say to the Senator, that not only was Senator WARNER a cosponsor of these two amendments, but that everybody was on board. The point here is to give the courts some guidance to bring about legal certainty where there is a legal mass, as Senator MCCAIN indicated. So I don't know why anybody is objecting.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, I believe the Senator's amendment has real merit. I find no objection to it. It has been conveyed to me by the administration. We still have a very small difference—it sounds like a big difference—on the McCain amendment. But we have no difference on this amendment. We are prepared to accept it, unless someone comes over here and finds a way to articulate an objection.

Mr. MCCAIN. Madam President, who has the floor?

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. STEVENS. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, first, I thank the Senator from Alaska for his cooperation. I thank the Senator from South Carolina for his unique and very important perspective on this issue. But I also point out it is very unfortunate—very unfortunate—the Senator from South Carolina has to put this on an appropriations bill. I do not want to get off the subject too much, but there is something wrong with our process here that I have to, for my amendment, find some narrow germaneness in order to get around my commitment to not authorize on an appropriations bill. Technically, I am not authorizing on an appropriations bill.

It is very unfortunate the Senator from South Carolina has to authorize on an appropriations bill. There may be some objection from someone in the minority. There may be some question. That is because we are not going through an orderly process. This should have been as an amendment on the authorization bill, and that should have been taken up. If someone did not like it, they could have voted to take it out. Now we are in a process where the Senator from South Carolina has to put it in.

Our system here is broken, and we need to properly authorize. I certainly am not blaming the Senator from Alaska. He has his responsibility to get the appropriations bill done. But there is something wrong when we are in a war—in a war; Americans' lives are on the line as we speak—and somehow we do not have room in our agenda to authorize the training, the equipping, the benefits, the pay, all of the things that go with an authorization bill, including the amendment of the Senator from Carolina.

A lot of us have repeatedly decried that this process of legislating is so badly broken today that we cannot even take care of the men and women in the military in an orderly fashion. It cries out for fixing. I would hope at some point we, as a body, would fix this system so we authorize before we appropriate funds. Again, this is meant as no criticism of the Senator from Alaska. He is playing the hand he is dealt. But there is something very badly wrong when we are in a war and somehow we cannot find time in our agenda and ought to authorize the much-needed pay raises, equipment, training, and all of the other things that go along with the authorization of our Nation's defenses.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, first, I thank the Senator from Arizona and the Senator from South Carolina for bringing focus to this issue. They are approaching this issue in different ways, but it is a matter of enormous importance and consequence. Both Senators, as members of the Armed Services Committee, remember the good deal of thought, work, and consideration given this subject matter by the Armed Services Committee under the guidance of Senator WARNER and Senator LEVIN.

AMENDMENT NO. 1977

Madam President, now is time for action. That is why I rise to speak in strong support of the McCain amendment and urge our colleagues to understand it and to give it strong support as well.

As we know, nearly 2 years ago, American soldiers at Abu Ghraib were struggling to figure out how to handle the hundreds of detainees who were pouring into that facility. They had no guidance. They had no directions to regulate that treatment. In the absence of that guidance, their treatment of detainees deteriorated into cruel and inhumane and degrading treatment.

They documented their cruelty, and the images are still horrifying—an Iraqi prisoner in a dark hood and cape, standing on a cardboard box with electrodes attached to his body; naked men forced to simulate sex acts on each other; the corpse of a man who had been beaten to death, lying in ice, next to soldiers smiling and giving a ''thumbs up'' sign; a pool of blood from the wounds of a naked, defenseless prisoner attacked by a military dog.

The reports of widespread abuse by U.S. personnel was initially met with disbelief and then incomprehension. But the reports are too numerous to ignore. We had reports of detainees in Afghanistan shackled to the floor, left out in the elements to freeze to death. We have had reports of detainees in Guantanamo who were subjected to sexual humiliation.

Human Rights Watch recently released a report based on the statements of three soldiers, one officer and two noncommissioned officers, in the 82nd Airborne who described how their battalions routinely used physical and mental torture as means of intelligence gathering and stress relief—torture as a sport.

They stand in sharp contrast to the values America has always stood for: our belief in the dignity and worth of all people, our unequivocal stance against torture and abuse, our commitment to the rule of law. The images horrified us and severely damaged our reputation in the Middle East and around the world.

Instead of taking responsibility for what happened, the generals and senior administration officials tried to minimize the abuse as the work of ''a few bad apples''—all conveniently lower rank soldiers—in a desperate effort to emphasize the role of senior military officials in exposing the scandal and insulate the civilian leadership from responsibility for changing the rules.

It is clear what the results of those changes were. CPT Ian Fishback, a West Point graduate and officer in the 82nd Airborne, wrote: Despite my efforts, I have been unable to get clear, consistent answers from my leadership about what constitutes lawful and humane treatment of detainees. I am certain that this confusion contributed to a wide range of abuses including death threats, beatings, broken bones, murder, exposure to elements, extreme forced physical exertion, hostage taking, stripping, sleep deprivation and degrading treatment.

For nearly 2½ years—from August 2002 until December 2004—the executive branch of our Government operated under the assumption that it was not bound by the law that prohibits torture. The Office of Legal Counsel promulgated an official opinion stating that the President and everyone acting under his Commander-in-Chief authority was free to ignore this law. It states:

> Any effort to apply [the anti-torture statute] in a manner that interferes with the . . . detention and interrogation of enemy combatants . . . would be unconstitutional.

This opinion was adopted and implemented by the CIA and the Department of Defense. Effectively, what it was saying was that for anybody who was operating under the DOD, if the purpose of their torture was to get information, then it was basically all right. If the purpose of the torture was to bring harm, then it would be illegal. But that decision by the Office of Legal Counsel in the Department of Justice effectively said: The school is out. People can do anything they want to with any detainee. And that was the rule for 2½ years. It is called the Bybee memorandum. We have had extensive hearings on that in both the Armed Services Committee and the Judiciary Committee.

This opinion was adopted and implemented by the CIA and the Department of Defense. Harold Koh, a leading scholar of international law and dean of Yale Law School, who served in both the Reagan and Clinton administrations, called it ''the most clearly legally erroneous opinion'' he has ever read. That is in reference to the Bybee memorandum that was requested by the CIA and the Department of Defense, through the Attorney General, from the Office of Legal Counsel, to give them a memorandum to effectively permit wholesale torture. They received that memo, and they used it

to gut our long-standing laws. That Bybee memo was the law of the land, effectively, in the CIA and the Department of Defense for 2½ years. We saw what the results were. The McCain amendment would make sure that will not happen again.

Our political leaders made deliberate decisions to throw out the well-established legal framework that has long made America the gold standard for human rights throughout the world. The administration left our soldiers, case officers, and intelligence agents in a fog of ambiguity. They were told to ''take the gloves off'' without knowing what the limits were, and the consequences were foreseeable.

In rewriting our human rights laws, the administration consistently overruled the objections of experienced military personnel and diplomats. The Secretary of State, Colin Powell, warned the White House:

It will reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our [own] troops.

Senior Defense officials were warned that changing the rules could lead to so-called ''force drift'', in which, without clearer guidance, the level of force applied to an uncooperative detainee might well result in torture.

William Taft, the State Department Legal Advisor in President Bush's first term, recently called it a source of amazement and disappointment that the Justice Department severely limited the applicability of the Geneva Conventions to the detainees. In an address at American University, he said the decision to do so:

unhinged those responsible for the treatment of the detainees . . . from the legal guidelines for interrogation . . . embodied in the Army Field Manual for decades. Set adrift in uncharted waters and under pressure from their leaders to develop information on the plans and practices of al Qaeda, it was predictable that those managing the interrogation would eventually go too far.

And they did.

The Judge Advocates General echoed Mr. Taft's concerns. On July 14, 2005, the JAGs appeared before the Senate Armed Services Committee's Subcommittee on Personnel. In response to questioning by my friend Senator GRAHAM, the witnesses acknowledged that the Justice Department's policy embodied in the Bybee torture memorandum's definition of torture was a violation of international and domestic law and alarmed the Judge Advocates General who reviewed it.

Their alarm was well founded because their concerns were overruled by General Counsel William Haynes, who issued the Defense Department's April 2003 Working Group Report. The report twisted and diluted the definition of ''torture,'' claimed that military personnel who commit torture may invoke the defenses of ''necessity'' and ''superior orders,'' and advised military personnel that they are not obligated to comply with the Federal prohibition on torture.

Senator GRAHAM himself accurately assessed the impact of the civilian authorities when he told the JAG officers at the hearing: I think it is fair to say that the Department of Defense was secondary to the Department of Justice in a political sense, and that was our problem. If they had listened from the outset, we wouldn't have had a lot of the problems that we have had to deal with in the past.

The President is not an emperor or a king. His administration is not above the law or accountability, and he is certainly not infallible.

The single greatest criticism of this administration's detention and interrogation policies is that it failed to respect history, the collective wisdom of our career military and State Department officials, and that it holds far too expansive a view of executive authority. In short, the White House suffers from the arrogance of thinking they knew best and abandoning the long-standing rules.

As Captain Fishback wrote:

We owe our soldiers better than this. Give them a clear standard that is in accordance with the bedrock principles of our nation.

We are America, and our actions should be held to a higher standard, the ideals expressed in documents such as the Declaration of Independence and the Constitution.

The McCain amendment takes a strong step forward to giving our troops that standard. I hope it is supported. Madam President, I ask unanimous consent that Captain Fishback's letter, which was published in the Washington Post, be printed in the RECORD.

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

DEAR SENATOR MCCAIN: I am a graduate of West Point currently serving as a Captain in the U.S. Army Infantry. I have served two combat tours with the 82nd Airborne Division, one each in Afghanistan and Iraq. While I served in the Global War on Terror, the actions and statements of my leadership led me to believe that United States policy did not require application of the Geneva Conventions in Afghanistan or Iraq. On 7 May 2004, Secretary of Defense Rumsfeld's testimony that the United States followed the Geneva Conventions in Iraq and the ''spirit'' of the Geneva Conventions in Afghanistan prompted me to begin an approach for clarification. For 17 months, I tried to determine what specific standards governed the treatment of detainees by consulting my chain of command through battalion commander, multiple JAG lawyers, multiple Democrat and Republican Congressmen and their aides, the Ft. Bragg Inspector General's office, multiple government reports, the Secretary of the Army and multiple general officers, a professional interrogator at Guantanamo Bay, the deputy head of the department at West Point responsible for teaching Just War Theory and Law of Land Warfare, and numerous peers who I regard as honorable and intelligent men.

Instead of resolving my concerns, the approach for clarification process leaves me deeply troubled. Despite my efforts, I have been unable to get clear, consistent answers from my leadership about what constitutes lawful and humane treatment of detainees. I certain that this confusion contributed to a wide range of abuses including death threats, beatings, broken bones, murder, exposure to elements, extreme forced physical exertion, hostage-taking, stripping, sleep deprivation and degrading treatment. I and troops under my command witnessed some of these abuses in both Afghanistan and Iraq.

This is a tragedy. I can remember, as a cadet at West Point, resolving to ensure that my men would never commit a dishonorable act; that I would protect them from that type of burden. It absolutely breaks my heart that I have failed some of them in this regard.

That is in the past and there is nothing we can do about it now. But, we can learn from our mistakes and ensure that this does not happen again. Take a major step in that direction; eliminate the confusion. My approach for clarification provides clear evidence that confusion over standards was a major contributor to the prisoner abuse. We owe our soldiers better than this. Give them a clear standard that is in accordance with the bedrock principles of our nation.

Some do not see the need for this work. Some argue that since our actions are not as horrifying as Al Qaeda's, we should not be concerned. When did Al Qaeda become any type of standard by which we measure the morality of the United States? We are America, and our actions should be held to a higher standard, the ideals expressed in documents such as the Declaration of Independence and the Constitution.

Others argue that clear standards will limit the President's ability to wage the War on Terror. Since clear standards only limit interrogation techniques, it is reasonable for me to assume that supporters of this argument desire to use coercion to acquire information from detainees. This is morally inconsistent with the Constitution and justice in war. It is unacceptable.

Both of these arguments stem from the larger question, the most important question that this generation will answer. Do we sacrifice our ideals in order to preserve security? Terrorism inspires fear and suppresses ideals like freedom and individual rights. Overcoming the fear posed by terrorist threats is a tremendous test of our courage. Will we confront danger and adversity in order to preserve our ideals, or will our courage and commitment to individual rights wither at the prospect of sacrifice? My response is simple. If we abandon our ideals in the face of adversity and aggression, then those ideals were never really in our possession. I would rather die fighting than give up even the smallest part of the idea that is ''America.''

Once again, I strongly urge you to do justice to your men and women in uniform. Give them clear standards of conduct that reflect the ideals they risk their lives for.

With the Utmost Respect,

CAPT. IAN FISHBACK,
82nd Airborne Division,
Fort Bragg, North Carolina.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold?

Mr. KENNEDY. I withhold my suggestion.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:29 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. SUNUNU).