

not a plain statement, that we need to pass legislation and we need to have congressional hearings to stop things such as what occurred in Abu Ghraib.

I was a member of the Armed Services Committee. I am a member of the Judiciary Committee. We have had about 20 hearings on Abu Ghraib. But do you know how we found out about Abu Ghraib? We found out about it at a press briefing in Baghdad by a U.S. Army general or colonel who said they had reports of abuse at Abu Ghraib and they were taking steps to investigate it. And they did so. They found people had violated the law. They prosecuted them. A number of them are in jail this very day.

We did not need to pass one single law for that to happen because it was in violation of military standards. In fact, none of the mistreatment of prisoners at Abu Ghraib had to do with trying to interrogate them. These people were not interrogators. They were prison guards, manning the prison at the graveyard shift, who lost their discipline, abused those prisoners, and had no real excuse for it. As one of them said, Smith—I believe he was a sergeant—he said: We all knew there would be hell to pay if anybody found out what we did. It was not approved. We were not ordered to do it. It was not part of our military standard and training.

I remember, very vividly, during that time that an African-American colonel in combat, as soldiers were taking hostile fire—they captured someone, one of the terrorists or bad guys—and he fired a gun beside his head to frighten him and to get him to tell some information. There was a life-and-death matter for his troops. They drummed him out of the service. He never touched the guy. He never hurt him. It was a moment of passion and intense feeling and reaction to being in a life-and-death struggle. He is out of the military even though he had a quite distinguished career.

Our military does not approve of abusing and torturing prisoners. In fact, we have a statute that defines torture, and they have worked hard to stay within it. People who do not stay within it get prosecuted. Now, we have ideas to go further, and that has been put as a part of this bill, and it is going to become law. I hope it doesn't go too far. But we have never approved of the kinds of things that went on in Abu Ghraib. We have never approved of torture. We have a statute, passed by this Congress, that prohibits torture by the military or anyone else. We do not allow that. It is not part of our standards as a nation. But to say there can never be any stress on prisoners who have great intelligence, and who are threats to America, I don't think has been consistent with the law of warfare.

I will note, parenthetically, that it became quite clear, as went through our hearings, that the Geneva Conventions, which protect soldiers in lawful

combat—those protections do not apply to these prisoners. They do not wear uniforms. They do not operate on behalf of a state, a legitimate nation state, even a quasi-legitimate nation state. They do not adhere to standards of behavior. They do not carry their guns openly and their weapons openly. They sneak around and murder women and children, innocent civilians, contrary to the laws of warfare. Therefore, they do not gain the protections of the Geneva Conventions. But they are protected against torture, and they are entitled to that protection. They should be granted it. And if anybody violates those standards, they are prosecuted by the U.S. military.

I think the military has taken far too much abuse on this. They did a huge study of Guantanamo, Gitmo. I have been there twice. I know the standards those guards operate under. They have a phrase they greet each other with when they see each other on the base, one soldier to another. They say: Honor bound. And when they see you, they say: Honor bound, sir. They have high standards. They found three abuse cases, most minor, that were discovered after a review down there, and disciplinary action was taken concerning those. But they are not being mistreated every day, abused or tortured. I reject that.

#### PATRIOT ACT

Mr. SESSIONS. Mr. President, I also say this. I am not aware of a single proponent of the PATRIOT Act who has accused any Member on the other side, or any Member who opposes the PATRIOT Act, of being unpatriotic. Where did that come from? I would like to search the RECORD. I would like to see that. I do not think it has occurred. I have not heard anybody over here say that. We say: You are wrong. We say you are making a mistake, that you ought to reconsider, you ought to study the act and see that it does not threaten our liberties, that it is consistent with our constitutional protections this great Nation provides.

If you do not pass it, I will repeat, this legislation will lapse as of December 31, and it will place our Nation at greater risk. There is no doubt about that. I would repeat, again, it is stunningly surprising to me that we end up, after the bill passed here unanimously in the Senate, unanimously in the Judiciary Committee, and it went to conference with the House of Representatives. At conference, most of the disagreements were resolved in favor of our bill. Who has ever heard of a bill of this size that did not have some changes in conference? They were all minor. Most of the changes resulted in movement toward the Senate bill.

Some of the provisions were left to be sunsetted in 4 years by the Senate bill. The House said they should be sunsetted in 10 years, so they would stay in effect for 10 years before they would have a full up-or-down review for

reauthorization. We said 4 years. So we went to conference, and we thought agreement had been reached on 7 years. After we signed the conference report—Senator KYL and others—we thought we had an agreement at 7 years. This is what we normally do in these deals, sort of split the difference when you can. And Senator LEAHY and the Democratic members had a fit. No, no, no, it had to be 4 years. It had to be 4 years. And we argued that was not appropriate.

Senator KYL and I, particularly, were involved in those discussions, being members of the conference committee. We thought 7 years was a good compromise. That was the last issue to be decided, and we totally agreed to go to 4.

That was the Senate version exactly. They wanted 7 as a compromise. The House wanted 10 in their bill. We ended up totally winning on the Senate position.

There was a dispute about delayed notification warrants. The Senate bill that passed unanimously in the Judiciary Committee and on the Senate floor said the warrant that is executed, after prior approval by a U.S. judge who has made a specific additional finding on facts presented to that judge, is justified to delay notification to the person's residence who is being served. In those circumstances, delayed notification is essential because these matters are going to involve tremendous security and are of tremendous importance to an investigation of this kind. In the Senate, we decided that investigators should report back to the judge within 7 days. After 7 days, you could then ask for an additional period of time before you notified the person whose residence had been searched.

The House bill set the delayed notification period for 180 days. They said: In a terrorist investigation, you could delay notification to the person whose house was searched for 180 days.

So we had a big brouhaha over that. We agreed to 30 days, which is far closer to the Senate version than to the House. Frankly, it didn't make a whole lot of difference because you have to have prior judicial approval to delay notice. And if you want to continue to delay notice, you have to prove that there is an existing continuing threat and danger. It is not a big deal.

This bill is about to expire, and those are the kinds of things that they say are such tremendous changes that now we should not even get an up-or-down vote. The fact that we are going to allow this bill to expire and not allow it to become law, will result in the wall going back up between the CIA and the FBI. That makes no sense.

Frankly, there are some things in here that worry me. One of the things you have to do to delay notice or to not notify someone under a 215 order is to have an agent certify that not doing would result in a threat to America. It is hard to certify that. Some people think they will just say it anyway.

They can't just say it anyway. These are professionals. They know what the standards are. They know that we have to have some proof to justify delayed notice or non-notification. The notification question has to be so significant that they can articulate and have proof that it represents a threat to somebody. I think that is too high a standard in these kinds of rare cases involving national security and the investigation of terrorism.

There is a show on one of the cable stations right now called "Sleeper Cell." They have an undercover operative in one of these terrorist cells, and he meets with them. That is something you would love to see. One time I saw it. They had some hypothetical scene in which they said this was the only sleeper cell that they had ever penetrated. I don't know how many sleeper cells are penetrated today, but that is a hard thing to do. It is hard to get somebody in one of these closed, tightknit groups to know what they are doing. But if they do, they can go into the person's house. They can go wherever they are invited to go with the bad guys and record them if they have a recorder. That is perfectly legitimate under the law. But you don't often have that. And so how do you protect America?

You have to have records and documents. You have to be able to obtain evidence. Someone says: This individual came into our neighborhood, our community, Mr. FBI Agent. I just heard him talking. It sounded like he was talking about maybe being a terrorist. He sounded like he was involved in terrorist talk.

What does that agent need to do? He needs to act quickly. What would be one of the first things he would want to do? He is in contact with other terrorist groups. Is he communicating with terrorists around the world? How would you find that out? You don't need to tap their phones. All you would really need to do is obtain a subpoena for telephone toll records. A local county district attorney can subpoena telephone toll records to investigate an individual on a marijuana charge. Why in the world couldn't an FBI agent be able to get a subpoena for these records if he certifies under oath that it is related to a national security matter? Then if you see a bunch of telephone toll records between that individual and a known terrorist organization somewhere, you know this is not just a tip, this is the real thing.

That is what goes on in our investigative agencies today. They are not out there trying to snoop on your or my phone calls. They would be bored stiff listening to my phone calls.

This legislation is sound. It has been carefully debated. It came out of the Senate 4 years ago with only one "no" vote. It has even more civil liberties protections in it now than it did then. We ought to be passing it. We don't need to allow this legislation to lapse.

I am chagrined that the leadership was virtually ambushed. From out of

nowhere comes this full-fledged filibuster led by the Democratic side. Yes, there were four Republicans who voted against cloture. But only 2 of the 45 Democrats voted to move the bill forward. It was basically blocked by the Democratic Party. They had the votes to block it.

It is disappointing. We need not to allow this to happen. I hope my colleagues will review the bill, that they will think about those agents out there this very day trying to protect us from harm, and that they will consider carefully their votes. Let's move forward.

There is some thought that we can just moderate this bill some more, that we will just keep on weakening the bill, and that will be the price to pay for passing it. I don't think this bill needs to be weakened. I don't think it needs to be undermined any more than it is right now. It is a sound piece of legislation, and I will oppose that.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I rise to echo what Senator SESSIONS just said. I have tried to be involved with this detainee issue in as balanced a way as I can. I don't want my country to go down the road of adopting the tactics of our enemy. That has never been the issue. We have had some people who have done some bad things, and they have been prosecuted. But when you get editorials from major papers such as the New York Times saying our troops routinely abuse people, that is ludicrous. There have been thousands of people detained in this war. Some have been mistreated. We are prosecuting those people. We can do better, but we will do better. We are trying to get a grip on our policies so that we cannot only live up to who we are as a people but defend ourselves, too.

This enemy knows no bounds. This enemy is a ruthless enemy. They train each other to allege abuse. That is part of the al-Qaida manual. They will say anything. We want a process to make sure that real allegations are dealt with honestly and that mere accusations do not require us to let these people go and not be able to defend ourselves.

This editorial refers to the so-called war on terror. That is a mindset we need to reject. This is not a so-called war.

I just got back from Iraq. It is a real war. Five minutes before the polls opened, they lobbed a shell over where we were staying. One marine was injured. It is a real war to him and to all the other people who have been wounded and to the families who have lost their loved ones. It is a real war to the 3,000 people killed on 9/11 and their families. It is a real event. We are at war.

I am insistent that my country live up to its obligations under treaties, the law of armed conflict. I am equally insistent that our law reflect we are at war.

Senator SESSIONS is a former U.S. attorney.

We are not fighting crime here, we are fighting a war or terror. The PATRIOT Act is not about prosecuting people who are involved in criminal enterprises. The PATRIOT Act is about preventing the infiltration of our country by a foreign enemy who wants to blow us up and kill Americans.

During World War II, the War Powers Act was passed, and that makes this bill look like the ACLU. There were some very strong measures taken after Pearl Harbor, and they worked. The Germans and Japanese infiltrators were caught and our country, for the most part, was not infiltrated. The FBI and other organizations did a marvelous job protecting us against ruthless enemies, the Nazis and the Japanese.

This enemy is just as ruthless. We don't have to pick and choose between abandoning the rule of law and civil liberties. We don't have to choose between letting people go or anything goes. That is not the choice. The PATRIOT Act is a balance. Here is what I worry the most about: As we try to straighten out past mistakes, as we try to come up with new policies, I worry that we are slowly but surely losing the idea that we are at war. That is beginning to fade, and we are approaching this problem we face called terrorism as if it were a domestic criminal event. If we do that, our enemy will have opportunities they do not deserve. Our people will suffer.

So count me in and sign me up for adhering to the law of armed conflict and for maintaining the moral high ground. But I reject an effort to criminalize what I think is world war III.

I yield the floor.

(Mr. CHAMBLISS assumed the Chair.)

Mr. SESSIONS. Mr. President, I will ask him to tell us how many years he has been a U.S. Army JAG officer. He has been so familiar with all these issues and has provided much leadership to it with some great ideas in recent weeks on some of the amendments he has offered. I think people need to listen to what he said about the difference between war and criminality.

The President said at the beginning that we cannot treat this as crime; this is war. I think the Congress was all for it. We all said "yes." And now these issues arise again. I thank the Senator for sharing that. I had one more question I wanted to raise with him.

Mr. GRAHAM. I appreciate the compliment. I don't want to defame the Army. I am in the Air Force. I have been in the Air Force as an Active-Duty Reserve lawyer for 20-something years. By no means am I an international expert, but I feel as though I am going to get a master's degree in this type of law when this is all over. The bottom line is, I have a general understanding of how the law of armed conflict works versus domestic criminal law because that is what I used to

do. That is what I kind of still do. I understand the difference between defensive measures. Keeping an enemy from infiltrating a country is a different need than trying to domestically control the behavior of your own citizens. Sometimes your own citizens jump sides and join the enemy. When they do that, I don't have a lot of sympathy for them. So we have a different task at hand.

This is not regulating U.S. domestic criminal enterprises. This is trying to stop an enemy that is hell-bent on coming back. And they are coming. They are here. Thanks to fighting them hard, we have stopped them for 4 years. But it is inevitable that we are going to hit again.

Mr. SESSIONS. Will the Senator yield for one more question?

Mr. GRAHAM. Yes.

Mr. SESSIONS. I was pleased to be able to join with Senator GRAHAM and Senators LIEBERMAN, BAYH, BROWNBACK, and a number of other Senators, in forming a caucus or a group to treat the energy threats to this country as a national security threat. Now I think it is unfortunate—and it is a complex Senate that we are operating in today—that ANWR legislation will be a part of that bill. I wish it did not have to be, but things boiled down at the end of the session to that way. I would like to have the Senator share some thoughts on the philosophy of that bipartisan group that energy is security for our Nation.

Mr. GRAHAM. I thank the Senator for the question. I think we have come to the conclusion, after \$3-a-gallon gas, oil and gas prices are also good domestic politics because we all got our heads handed to us at home. Everybody is upset. If you are working in South Carolina making \$7, \$8, \$10-an-hour and gas is \$3 a gallon, it really hits home. What we came together on is trying to find a political solution to the domestic problem. What Senator SESSIONS indicated is that we came together on the fact that if we are this dependent as a Nation on Mideast oil, fossil fuels, 10 or 20 years from now, we have done our Nation a disservice because our national security interest is best served when we can be independent from forces we cannot control. We should, as a Nation, a long time ago have become more energy independent. It is a national mistake, from a security perspective, to have this much dependence on fossil fuels from a region that is this volatile. It weakens our ability as a Nation to protect ourselves.

In that regard, some Republicans and Democrats have come up with a proposal to be aggressive to wean us off Mideast foreign oil because it really does hurt our national security interest. We should not be this beholden to any region of the world for everyday functions in this country.

A final thought about the PATRIOT Act. Those who oppose it, I respect you for standing up for the American way, civil liberties. But there has to be a

balance here. When I go to the library, I don't want to be bothered. Let me tell you, if there is a reason to believe somebody is going to the library or using everyday life in America as a tool to infiltrate our country and do damage, I think we have to have a balance because they are here. The Presiding Officer knows better than I that they are here. The hijackers of 9/11 had multiple driver's licenses. They know how to game the system. They know how to get access to our technology and our science. If we don't have the common sense to have a balanced approach to get ahead of them, and if we play this game that this is crime and not a war, we are going to empower them beyond what is reasonable.

If we leave as a body and let this act expire because we cannot find common ground, then I think we have done the country a great disservice, and the enemy would appreciate that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, parliamentary inquiry: It is my understanding—and I ask the Chair if this is correct—that a Presiding Officer, under the rules of the Senate, is not allowed to engage in debate other than to object to motions in his capacity from the State from which he comes; is that correct?

The PRESIDING OFFICER. Under the precedent of the Senate, the Presiding Officer has no right to engage in conversation with Senators on the floor. He should not participate in debate.

Mr. COBURN. OK.

The PRESIDING OFFICER. However, a Senator may vote from the chair.

Mr. COBURN. I thank the Chair. In the earlier discussion we had, it was stated by the minority leader that the Presiding Officer can debate from the chair. I did not think that was right. In fact, it is not correct.

I want to wrap up with a couple of thoughts. We have had a lot of discussion this evening about process and precedent and keeping your word. As we think about what that means to our country, we ought to go a little further back and think about the heritage that has been given to this country by those who came before us. I want to characterize a couple points of that.

One is doing whatever we have to do, including personal sacrifice, to assure opportunity and a great future for those who follow.

It seems to me, as we get hung up on a discussion of process, that we ought to pay as much attention to heritage. I mean by that, we are having trouble passing the Labor-HHS bill. It is the first bill to come through this Senate in a number of years that doesn't have any earmarks on it. I suspect the reason people don't want to vote for it is because they did not get the political benefit of placing the public's dollars to their own political advantage.

The other point is we hear debate that it does not supply enough. The

real heritage that came before us is Members of this body making the hard choices—not easy choices, hard choices—about priorities. We are at such a point that this next year is going to be a very difficult year for us in terms of how we pay for a war, how we pay for Katrina, and the related items we have an obligation to pay for, and not diminish the opportunity and the future of our children and our grandchildren.

I think we would be very wise to not put the purity of our own process ahead of our basic morality and ethics of maintaining the heritage this country has.

I will not say any more. I know we are about to wrap up, and I appreciate the time.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

#### CELEBRATING THE LIFE OF JIM SCHLINKMANN

Mr. REID. Mr. President, today I rise to honor the life of a public servant who worked in one of the most beautiful corners of Nevada, Great Basin National Park. James "Jim" Schlinkmann was chief ranger of the park and passed away while returning home from an assignment on the National Park Service Team assisting with Hurricane Wilma recovery.

I met Jim several times at the park, most recently during this year's Fourth of July weekend when I traveled out to Baker, NV, for the grand opening of the new Great Basin Visitor Center. On that day, Jim personally presented me with a spectacular photo of a Great Basin National Park icon, an ancient bristlecone pine.

I have an especially clear recollection of that day, and of Jim, because the opening of the new visitor center was such a special event. Cowboy poetry was read, patriotic songs were sung, and friends came together to celebrate the tremendous landscape that exists at Great Basin National Park. The picture that Jim presented to me is now hanging in my Reno office and is a joyful reminder of that day and of the last time I got to visit with Jim.

I know from my conversations with Jim and from the park's superintendent that Jim loved the mountains of Great Basin National Park where he spent the last 5 years. He will most definitely be remembered fondly there. And I will remember his dedicated public service at Great Basin and all the many parks he served during his 23-year career.

Some of Jim's many accomplishments include his expertise as a rock