

efforts to reinstate the death penalty. State courts have limited or banned the death penalty, including the Kansas Supreme Court, which in 2001 ruled that State's death penalty law unconstitutional. That case, *Kansas v. Marsh*, was heard in the U.S. Supreme Court just last week. Even in Texas, the State that executes by far the most people every year, a life-without-parole sentence was recently enacted, giving juries a strong alternative to the death penalty. And Texas Governor Perry also established a Criminal Justice Advisory Council to review the State's capital punishment procedures.

These signs of progress have coincided with critical new restraints imposed by the Supreme Court, which in recent years has issued two key rulings that limited the application of the death penalty. In 2002, the Court held in *Atkins v. Virginia* that applying the death penalty to mentally retarded defendants was excessive and constituted cruel and unusual punishment in violation of the Eighth Amendment. And just this year, in *Roper v. Simmons*, the Court made the same decision with regard to individuals who commit crimes before their eighteenth birthday. Capital punishment for mentally retarded defendants and juveniles is now unconstitutional in the United States.

Mr. President, as I mentioned before, there are many reasons people are questioning the death penalty in ever-increasing numbers. A common concern is that innocent people end up on death row, and we cannot tolerate errors when the state is imposing such a final penalty. More than 120 people on death row have been exonerated and released. Think about that. Just over one thousand people have been executed in the era of the modern death penalty, while a number equaling 12 percent of those executed have been exonerated. Those are not good odds, Mr. President.

Even more horrific is the prospect that we have already executed individuals who were, in fact, innocent. It saddens me greatly to report that information has come to light strongly demonstrating that two men put to death in this country in the 1990s may well have been innocent. That sends chills down my spine, as I'm sure it must for my colleagues.

Earlier this year in Missouri, local prosecutors in St. Louis reopened the case of a 1980 murder because the evidence against the man convicted of the crime had fallen apart. That man, Larry Griffin, was sentenced to death, and he was executed by the State of Missouri more than 10 years ago. Yet now, 25 years after the crime and more than 10 years after his execution, very serious questions about his guilt are being raised. CNN recently reported that a University of Michigan law professor who researched the case found that the first police officer on the scene now claims the person who testified as an eyewitness gave false testimony. A victim of the shooting, who

was never contacted before Mr. Griffin's original trial, stated that the person claiming to be an eyewitness at the original trial was not present at the scene of the crime. Samuel Gross, the Michigan law professor who supervised the new investigation of the case that led to the St. Louis Circuit Attorney's decision, was quoted as saying with regard to this man's innocence: "There's no case that I know of where the evidence that's been produced in public is as strong as what we see here."

The second case is from Texas, where a young man named Ruben Cantu was executed in 1993. He was just seventeen at the time of the murder for which he was executed. Again, in this case, the only eyewitness to the crime has recanted his statement, and told the *Houston Chronicle* that Cantu was innocent. The *Houston Chronicle* also reported that the judge, prosecutor, head juror, and defense attorney have since realized that, as the newspaper put it, "his conviction seems to have been built on omission and lies."

The loss of one innocent life through capital punishment should be enough to force all of us to stop and reconsider this penalty. These cases illustrate the grave danger in imposing the death penalty. Whatever the new evidence that might come to light, it doesn't matter. There's no going back.

Mr. President, I know that many people in this country say that it doesn't matter what other countries do or say, that we should not look abroad for ideas. But the fact is that attitudes are changing around the world about capital punishment, and the United States is in poor company internationally on this issue. We are the only Western democracy ranked in the top ten countries in executions in 2004. And increasingly, other countries are rejecting capital punishment. Over the past 10 years, according to Amnesty International, an average of three countries per year has abolished the death penalty.

In closing, I urge my colleagues to take a long, hard look at capital punishment. Years of study have shown that the death penalty does little to deter crime, and that defendants' likelihood of being sentenced to death depends heavily on whether they are rich or poor, and what race their victims were. We have experienced again and again the risks, and realities, of innocent people being sentenced to death. I believe that it is wrong for the State to put people to death, especially when we can achieve our public safety goals by sentencing them to life without parole. It is heartening to see so many people reconsidering the death penalty, and it is my hope that in time we will end it in the United States.

I yield the floor.

#### IRAQ

Mr. LAUTENBERG. Mr. President, over the weekend the Senate passed my resolution, S. Res. 338, to honor the

first 2,152 troops who have died in Iraq and Afghanistan by listing their names and hometowns in the CONGRESSIONAL RECORD. They deserve this tribute for their valiant support of their military obligations.

I appreciate the support of my colleagues on this measure. It is a symbolic way for us to honor each of our fallen heroes individually.

But there is another way we can honor their memory. And that is to be honest and truthful about the war in which they fought—Iraq.

The President has taken small steps toward candor on Iraq, but the denial of reality is still apparent in his speeches.

To make matters worse, the President is still making insulting insinuations about those who criticize his Iraq policy. In his Sunday night address to the nation, President Bush said:

Some look at the challenges in Iraq and conclude that the war is lost, and not worth another dime or another day.

Does this statement suggest that those who disagree with the President would not even spend a trivial amount to protect America's international interests?

The President states that the sacrifices in Iraq are made in dimes and days. But what about lives?

What about the more than two American lives given each day so far this year in Iraq? The President didn't mention that.

I have gone to many memorial services and funerals for brave, young Americans from New Jersey who died in Iraq. Seventy-three soldiers with ties to New Jersey have died in Iraq and Afghanistan.

I have also visited Walter Reed Army Hospital here in Washington several times, and I have been struck by the incredible resilience and dedication to country of those young Americans.

While these brave men and women put their lives on the line, this administration bypasses reality.

Today we know that Iraq did not pose an imminent threat to our national security. We know that there were not weapons of mass destruction. We also learned that Iraq had nothing to do with 9/11 and actually had an adversarial relationship with al-Qaida.

There is no doubt Saddam Hussein was a maniacal dictator who killed, tortured, and suppressed his own people.

But President Bush did not call for an invasion of Iraq based on Saddam's treatment of his own people. President Bush called for war with Iraq because he argued that Saddam was a direct threat to the American people.

That turned out to be untrue, plain and simple.

Now, in the wake of the administration's mishandling of this war, much of Iraq has turned into a magnet for terrorists and extremists. President Bush continues to say that Iraq is a "central

front of the war on terror." But the reality is that Iraq has become a terrorist front as a result of President Bush's mistakes.

Our 160,000 troops in Iraq have become a target for cowardly insurgents who attack us with roadside bombs and suicide attacks.

This is not progress.

Despite claims by supporters of the President's Iraq policy we are not making sufficient progress in Iraq. Unfortunately, we may be sinking deeper into a quagmire.

We have not made progress because the President has never put together a coherent plan for postinvasion Iraq.

For evidence of this, one need only look at the infamous speech aboard the aircraft carrier on May 1, 2003, when President Bush declared "mission accomplished."

"Mission accomplished" sure sounded like the job was done and our troops can begin to come home.

But we now know the mission was not accomplished on May 1, 2003.

More recently, over the past few weeks, President Bush has been making speeches about Iraq in an attempt to reshape people's perceptions of the war. The President knows that polls show that a majority of the American people do not believe that the war is being managed properly.

President Bush thinks if something is repeated often enough, people will eventually believe it.

But the American people will not stand still while we lose more of our courageous young men and women.

We all pray that Thursday's Iraqi elections will lead to a viable government that will create stability. It could be a critical first step.

But where are the plans if the elections do not lead to success? How long until more lost lives exhaust the patience and will of the American people?

In the meantime, supporters of the President point to evidence of significant progress as more satellite dishes appear on Iraqi roofs and cell phones are in Iraqi hands. But while the anxiety and fear existing in thousands of American families continues, Iraqi satellite dishes and cell phones do not suggest relief.

It seems possible to get an honest assessment from the administration of any future plans to get our people home.

That probably explains why some of President Bush's statements on Iraq have been contradicted by current military leaders.

For example, last June President Bush said there were 160,000 Iraqi troops trained and ready to fight. But then, a few months later, Gen. George W. Casey, Jr.—the top U.S. commander in Iraq—said only one Iraqi battalion was able to conduct operations independently of American forces. That means less than a thousand Iraqi soldiers were actually equipped to fight without our help.

And we should pay close attention to what the former head of U.S. Central

Command—retired Gen. Anthony Zinni—said about this Iraq operation.

General Zinni has described the poor planning for the Iraq war as, "at a minimum true dereliction, negligence and irresponsibility, at worse, lying, incompetence and corruption."

General Zinni went on to say, "And to think that we are going to 'stay the course'—the course is headed over Niagara Falls."

Other generals with vast experience voiced serious doubt to the White House about Iraq, including Norman Schwarzkopf, Wesley Clark, Brent Scowcroft and Eric Shinseki.

But the people who wear a suit—not a uniform—in the administration didn't listen.

I served in the Army. I have met thousands of soldiers. I know that it takes about 3 months to turn a young American into a trained and dedicated soldier. So why has it taken almost 3 years to train a handful of Iraqis to be able to fight for their country?

President Bush also said this war has made us safer. But Iraq is not safe for our troops or the Iraqi people. We had 85 soldiers killed last month—one of the deadliest months since the war began.

There have been over 70 suicide bombings in the last 2 months, an average of more than one a day and more than 3,000 concealed bombs either exploded or discovered.

President Bush points to last Thursday's parliamentary elections in Iraq as a sign that there is light at the end of the tunnel. Let's hope this is true.

But we have heard rosy predictions from this President before, yet the insurgency seemed to only grow each time.

Remember: We also heard rosy predictions when the President said "mission accomplished." We heard it when Saddam Hussein was captured. We heard it a year ago after the first election in Iraq.

Meanwhile, 2,158 of our best young Americans have been killed. And nearly 16,000 have been wounded—many with injuries that will forever change their lives. No wonder a significant majority of the American people do not believe that President Bush has a plan to end this war.

That is why it is time for the President to give the American people a realistic plan for bringing our troops home.

What needs to happen? How many Iraqi troops need to be trained?

Let us set reliable goals for our mission, with an understanding of what it will take to get the job done and bring our troops back home to their families.

Mr. President, we don't want our leader to deny us the hard facts of war. And we don't want the price of this conflict hidden by prohibiting photographs of the flag-draped coffins that carry heroes back to our shores.

We need a leader who recognizes what a majority of the American people see taking place in front of their

eyes on television, in our newspapers, in our homes, and in our hearts.

President Bush, I ask you to be frank with us about what we are facing in the future in Iraq. Show us how you will work to avoid further loss of life. And while we honor the memories of those who have perished, we must do whatever we can to make life more bearable for their families.

#### KOREAN FAIR TRADE COMMISSION DECISION AGAINST MICROSOFT

Mrs. MURRAY. Mr. President, I rise today regarding the December 7 Korean Fair Trade Commission, KFTC, decision against Microsoft. A major employer in Washington, Microsoft is being unfairly penalized by Korea, but this decision goes well beyond Microsoft as the Korean Fair Trade Commission's decision is ultimately a decision against free and fair trade.

When the European Commission issued its competition decision against Microsoft in March 2004, I was one of many Members who expressed serious concerns about the decision and its impact on one of America's most innovative companies and its workers. Like many of my colleagues, however, I was also alarmed at the broader policy implications of the decision—that Europe would adopt a decision whose negative impact on trade was so clear, and which diverged so markedly from the Department of Justice's remedy addressing the same conduct.

I believe that the December 7 decision of the Korean Fair Trade Commission against Microsoft is yet another warning sign that our trading partners are limiting competition in order to benefit their domestic interests. In this case, the Korean Fair Trade Commission not only followed the EU's market-distorting, anticonsumer approach, but appears to have gone substantially further than the EU remedies in several respects. The KFTC's decision makes me wonder whether the Microsoft case is not a unique case but instead indicates the beginning of a trend among some of our key trading partners to use competition law as a means to pursue protectionist agendas or advance domestic industrial policy goals. If so, this should be of tremendous concern to every member of this body.

Last week I wrote to U.S. Trade Representative Portman about this issue, and I would like to ask unanimous consent to place that letter into the record.

The letter urges Ambassador Portman to work with others in the administration—including at the White House and the Departments of Justice, State, and Commerce—to develop and implement mechanisms for addressing these issues in a more coherent and effective fashion. At the same time, I urged Ambassador Portman to work with others in the administration to take whatever steps are still available to advance the U.S. perspective in the Microsoft case, so that the