

whether the assassins were out here in Washington, DC. One woman who was an employee of the FBI and was walking in the parking lot of Home Depot in suburban Virginia was shot. Those families, those victims, could not have come to the court of justice if this bill passed.

There are other suits that are pending today. There is a case in Massachusetts, where a young man, Danny Guzman, an innocent bystander, was shot and killed in front of a nightclub in Worcester. Six days later, police recovered a 9 mm Kahr Arms handgun without a serial number behind an apartment building, near where Mr. Guzman was shot. In fact, I am told a 4-year-old child discovered the weapon first. Ballistic tests determined that the gun was the one used to kill Danny Guzman.

This gun was one of about 50 guns that disappeared from Kahr Arms' manufacturing plant. Some of the guns were removed from the plant by employees that Kahr Arms hired despite criminal records and histories of drug addiction. The case is being pursued now. The issue is not what Mr. Guzman did. It is what this company failed to do. They failed to have background checks on employees who handled weapons. They failed to have security devices that would monitor if these weapons would be taken out of Kahr Arms. I am told, interestingly enough, Kahr Arms is owned by a holding company for the benefit of the Reverend Sun Myung Moon's Unification Church. So one of the beneficiaries of this bill, if it passes, will be Reverend Moon's financial enterprises because they will be protected from allegations of recklessness, not just negligence.

Now, the first exception to the bill is title 18 United States Code section 924(h). This simply permits cases against sellers who sell guns they know will be used to commit a violent or drug trafficking crime. First, in the Kahr case, the guns were not sold; they were taken surreptitiously out of the factory. This exception would not apply.

Second, you have to show they knew that the guns would be used to commit a violent or drug trafficking crime—not that they were negligent in allowing guns in circulation, but that they had to know they would be used in a violent or drug trafficking crime.

The next exception is negligent entrustment. This applies where a gun dealer knows, or should know, that a purchaser will shoot someone with the gun, and that individual shoots a person. This exception only applies to a gun "seller." Once again, Kahr Arms was not, in this situation, a seller. Moreover, Kahr Arms did not entrust its guns to its employees. Rather, Kahr's employees removed the guns from the plant because of Kahr's negligent security, inventory tracking, and hiring of employees with histories of criminal conduct and drug addiction. So that exception doesn't apply.

There is another exception, negligence per se. Under this provision, gun sellers whose negligence causes injury could not be liable unless, at a minimum, they also violated a law or regulation which the court found an "appropriate basis" for a negligence per se claim and which proximately caused the injury. The exception only applies to a gun seller, and the bill defines sellers to include only importers or dealers, not manufacturers.

Moreover, in many States—and Massachusetts is one—negligence per se claims are not allowed under their practice and, therefore, the exception would not apply.

Knowing violation of the law exception: This exception applies where a gun seller or manufacturer knowingly violates a State or Federal statute when it makes a sale that leads to an injury. Here, Kahr Arms did not violate statutes related to the sale or manufacturing of a gun. Rather, Kahr's employees surreptitiously took the guns out.

Breach of contract or warranty exceptions once again do not apply. It merely allows gun purchasers to sue if the seller or manufacturer did not provide the product or service it promised in its sales contract. This exception clearly does not apply.

Defective design is a narrow exception for actions for some deceptive design or manufacturing cases. But that exception does not apply.

Rather than being legislation that allows the good suits through and the frivolous ones out, this legislation effectively denies people, such as the family of Danny Guzman, their day in court, and many others. It would have denied the two police officers from New Jersey their day in court. It would have denied the victims of the snipers their day in court.

For these reasons and many others, I am opposed to the legislation and join others who are and look forward to continuing our discussions in the hours and days ahead.

Mr. SESSIONS. Mr. President, I thank my able colleague and will say, it is such a state we are in America that a company whose employees steal the guns and go out and shoot somebody with them gets sued for it. That is a fact of what my friend is saying, that these companies ought to be sued as a result of the theft of a gun by their employees.

If the law required them to do a background check and they failed to do so, they clearly would be liable under this act. The fact of filing off a serial number is, in fact, a criminal offense for which I have prosecuted quite a number of criminals. In addition, it would trigger, of course, a civil liability.

Gosh, we can talk about it a lot, and I will be glad to continue to discuss it, but the basic fact is a lot of these lawsuits are claiming that if they know, if manufacturers or distributors or sellers either know or should know that

some guns will be used illegally, they should be responsible for it. That is not good law. This is against what we are about in this country.

All this legislation does is say if you sell the firearm according to law, if you manufacture it according to law and somebody commits an intervening criminal act with it and shoots somebody, you should not be sued. But we have this anti-gun crowd which doesn't care about general principles of law that have stood us in good stead for hundreds of years. They have learned to manipulate the matter as effectively as they can to maintain lawsuits. The letter from Beretta I read earlier indicates that in the District of Columbia, the gun manufacturers who sold a gun in Minnesota and it was transported some way to Washington, DC, and was used in a crime and somebody was shot, the gun manufacturer is liable for that. And, in fact, that one jurisdiction that allows that kind of lawsuit can be enough to take down every gun manufacturing company in the United States. They have had some tough years and a lot of litigation going on.

Mr. President, I have spoken again, and unless my colleague would like to reply, we will close. It has been a good debate, and I have enjoyed it.

#### MORNING BUSINESS

Mr. SESSIONS. Mr. President, on behalf of the leader, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

#### TRIBUTE TO MAJOR GENERAL JOHN W. HOLLY

Mr. STEVENS. Mr. President, I come to the floor today to recognize the service of an outstanding leader and public servant. After more than 32 years in uniform, MG John W. Holly will soon retire and move into private life.

Four years ago, Major General Holly was appointed Program Director of the Joint Program Office of Ground-Based Midcourse Defense. For the past year he has also served as the Deputy Director of the Missile Defense Agency, overseeing the direction of all other ballistic missile defense programs in the agency.

The Ground-Based Midcourse Defense System is not your run-of-the-mill weapons program. It is virtually global in scope, spanning 12 time zones, from the United Kingdom to the outer reaches of the Aleutian Islands. It has required upgrades to early warning radars from the Cold War era and the development of the most advanced sea-going X-band radar ever built; this equipment was then linked with communication centers throughout the United States and firing sites in Alaska and California. This effort has also

involved the development, testing, and deployment of an interceptor-and-kill vehicle that closes in on its target at speeds of up to 18,000 miles an hour and hits within centimeters of its aim point.

Each of the major systems involved in this effort and many of their component parts were built under different contracts, often by different manufacturers, at different times, and with different technologies. The entire system is being developed and acquired by non-traditional methods, which ensure we deploy effective defensive capabilities to our troops as fast as possible. And, of course, all of these pieces must work together as one, flawlessly, every time and on very short notice.

Since the 1960s, Americans have dreamed of having this type of capability, and in the past 3 years we have made remarkable progress. None of this would have been possible if President Bush had not withdrawn the United States from the Anti-Ballistic Missile Treaty in June 2002. And much of our success can be attributed to the dedication and leadership of Major General Holly.

Major General Holly was ideally prepared for his responsibilities at the Missile Defense Agency. His experiences at the platoon through corps levels gave him an understanding of what it means to support our men and women in uniform. His management experience in research, development, and acquisition—especially in rocket propulsion and guidance—honed his ability to integrate complex systems and move all of the essential parts through development at the same time.

In short, Major General Holly was the right man, in the right place, at the right time for our missile defense needs. Americans are deeply indebted to him for answering the call to serve.

Like many of my Senate colleagues, I often had the opportunity to meet with Major General Holly. Many of those visits took place in Alaska. And like many of my Senate colleagues, I have always been impressed with his integrity, commitment, and leadership skills.

Under Major General Holly's leadership, we have cut a new path through uncharted territory. He personally oversaw the emplacement of silos and interceptors at Fort Greely, Alaska and Vandenberg Air Force Base, California. He showed what could be done if you provided the right guidance, tools, and motivation.

Americans owe Major General Holly a debt of gratitude for a lifetime of selfless service and for his profound contributions to our Nation and our security. Those of us in the Senate will miss his leadership and his counsel. We wish him and his family all the best in the years ahead.

#### DEMOCRACY IN ETHIOPIA

Mr. McCONNELL. Mr. President, I want to bring to the attention of my

colleagues an op-ed in today's edition of the Taipei Times by Berhanu Nega, the chairman of Ethiopia's main opposition political party.

While the op-ed sheds light on the opposition's viewpoint throughout the controversial elections, I want to second the author's call for everyone in Ethiopia to commit themselves to a peaceful resolution of this crisis. Simply put, such a commitment is in the national interests of that country.

Let me close by indicating that the Senate continues to follow events in Ethiopia. I ask that a copy of the op-ed be printed in the RECORD following my remarks.

[From the Taipei Times, July 22, 2005]

ETHIOPIA IS STRUGGLING FOR DEMOCRACY

(By Berhanu Nega)

When we in Ethiopia's political opposition agreed to participate in the election that the government called in June, we were under no illusion that the process would be flawless. After all, Ethiopia has never known democracy. The dictatorship of Mengistu Haile Mariam was Africa's most blood-curdling Marxist regime, and was replaced by today's ruling EPRDF, whose "Revolutionary Democracy" is but a more subtle variation on the same theme.

So we knew that there would be problems with the election, that voting would not be clean in the way Western countries take for granted. Yet we nonetheless believed that the opposition, led by the Coalition for Unity and Democracy (CUD), would have room to maneuver and campaign, owing to the government's desire for international legitimacy. So we decided to test the waters and push for a real political opening and a genuinely competitive vote. Many Ethiopians appear to have agreed with this strategy.

The government did make some media available and engaged in more than 10 live televised debates. So, at least at first, there seemed to have been some intention on the government's part to open up the process—if not completely, then somewhat.

Now, however, it appears that the authorities wanted only a small, managed opening, on the assumption that they could control the outcome.

About a month before the election, the government began to shut down the political space it had opened. Its election campaign took on a vilifying tone, charging that the opposition was bent on destroying ethnic groups through genocide. Indeed, it called the opposition "interahamwe," invoking the memory of the Hutu militia that slaughtered 800,000 Rwandan Tutsis in 1994. The government also began to harass opposition parties, especially in rural areas.

This was unpleasant, but tolerable. So we continued campaigning. But things became nastier a week before the vote. Attendance at an official pro-government rally in the capital, Addis Ababa, was dwarfed by our rally the following day, when millions of demonstrators peacefully demanded change and showed their support for us. At that point, the government realized that its democratic opening was slipping out of its control.

Two days before the vote, our poll watchers and supporters were searched, arrested, and given one-day trials, with most sentenced to one or two months in jail. We feared that the voting would take place without the presence of our poll watchers. So we gave a press conference—all the opposition parties together—the day before the vote, demanding that the government release our party workers and allow people to vote freely.

Although the government met neither of these demands, the early results clearly showed that the opposition was gaining a large number of seats. It became obvious that we were winning in many constituencies and that we had won in Addis Ababa, as well as in most of the major cities and the rural areas.

What was surprising was the magnitude of the victory. In Addis Ababa, top government officials, including the ministers of education and capacity building, lost, as did the speaker of the House of People's Representatives. In rural constituencies, opposition candidates defeated such EPRDF heavyweights as the ministers of defense, information, and infrastructure, along with the presidents of the two largest regions, Oromia and Amhara.

The government wasted little time in responding: the next day, it declared itself the winner, with not even half of the constituencies reporting their results.

No surprise, then, that the public erupted in anger. When university students protested, the police moved in, killing one. In demonstrations the following day, 36 more people were killed. Soon after, our office workers were detained, and Hailu Shawel, Chairman of the CUD, and senior CUD official Lidetu Ayalew were put under house arrest. One hundred staff members were taken from our head office in Addis Ababa alone, and many more from regional offices. Up to 6,000 people were jailed—CUD members and even ordinary citizens.

My fear is that the will of Ethiopia's people will be stifled by government hard-liners. Doubts about the authenticity of the final results will create a danger of instability. Everyone—the government, the opposition, and the public—must commit themselves to a peaceful resolution.

To restore calm before a recount can be held, confidence-building measures are needed. The military must be taken off the streets. The ban on public demonstrations must be lifted. Those in jail must be released or given a fair trial. Those held simply because they do not support the government must be freed and allowed to participate in the democratic process. The government-controlled media must be open to diverse opinions; in particular, opposition access must be guaranteed.

Equally important, the international community must send observers—and thus a clear signal to the government that any attempt to maintain power by force or intimidation is unacceptable. The world must keep watching, just as it watched in Georgia, Ukraine, Lebanon, and Palestine.

For the first time in our ancient history, we Ethiopians have voted our conscience. Our people have played their part with courage and discipline. They deserve the opportunity to build a genuine democratic political system. That is their only guarantee to live in peace and to achieve prosperity.

#### ASEAN AND BURMA

Mr. McCONNELL. Mr. President, I welcome the good news from Southeast Asia this morning that the illegitimate Burmese junta—the misnamed State Peace and Development Council, SPDC—has deferred its 2006 chairmanship of the Association of Southeast Asian Nations, ASEAN.

I appreciate and recognize the individual and collective efforts of certain ASEAN member states for their support of substantive political reform in Burma.