

The Rehnquist Court was a Court which because of his leadership will be remembered for many years to come.

#### SENATE BUSINESS

Mr. DURBIN. Madam President, I wish to follow up the statement by our minority leader, HARRY REID. It is time to get down to business. We will finish this afternoon, after the funeral of Chief Justice Rehnquist. I hope the Senate will return immediately, come right back to the Senate and not waste any time. Let's start moving on important legislation.

The Department of Defense authorization bill was pulled from the calendar over 6 weeks ago by the Republican leadership so they could bring a bill sponsored by the gun lobby on the immunity of gun dealers from being sued in a court of law for wrongdoing. It was hard to believe we would take away from consideration a bill that dealt with our troops and our veterans, that tried helping, in the right way, the war in Iraq. We took that off the calendar so we could help a special interest group. Let's get back on the calendar to the Department of Defense authorization bill. That is something we can start this afternoon, and we should. Let's get it done this week, if we do nothing else, to make certain we are responsive to a very real concern we all share.

We have lost 1,886 American soldiers, as of today, in Iraq. Over 14,000 have suffered serious injuries. We need to get back on that bill, and then as soon as we finish that, focus on Hurricane Katrina.

All are stunned to see on the television each night, and to read in the newspapers, the accounts of the suffering that continues. Some of it is not as acute as it was just a few days ago, but consider the circumstances. These poor families were yanked out of their homes—in many cases their homes were destroyed—and now have been cast into other communities, in my State and other States, to try to keep it together while they search the whereabouts of their loved ones, put their kids in school, try to get a roof over their head, and try to get back to a normal life.

We need to do our part in Washington, DC, on a bipartisan basis, to deal with it. First, we need to provide the resources. The \$10.5 billion from last week will be gone quickly because this is such an expensive undertaking. Senator HARRY REID said yesterday, and I agree with him, let us not underestimate the cost of what this means: \$100 billion or \$150 billion is not unrealistic when considering the gravity of this hurricane and the damage it did. I fear some do not want to mouth those words—\$100 billion or \$150 billion—because they reflect the reality of what this is going to cost.

If we face the reality of the cost of Katrina, we are going to have to be honest about other decisions. How

could we possibly turn to a reconciliation bill, another bill we consider in the Senate, and cut spending for food stamps, cut spending for Medicaid, the health insurance program for poor in America, in this time of great national need? Yet that is what is planned. How could we conceive of the notion of going to a bill that would cut taxes on the wealthiest people in America, when we are at war with our children losing their lives every day, and we are facing Katrina and its aftermath where hundreds of thousands of Americans are in distress? How could we turn at that moment and say our highest priority is to give a tax break to wealthy people? That is not what America is all about. That is not what our values are all about.

For those who come to the Senate and speak in terms of their religious commitment, the basic reality is this: If you care for the least among you, you have to show it in your life's work. The Senate has that responsibility as well and more than others who do their work each day.

Two things come out of this crisis with Katrina. First, we understand what E.J. Dionne wrote on September 2 of this year in an article for the Washington Post entitled, "When Government is Good." He quoted a former Member of the Senate, Bill Cohen of Maine, who was also a Defense Secretary, and what he said was "Cohen's Law." Cohen's Law was this: Government is the enemy until you need a friend.

That is what we are learning with Katrina. We certainly learned it with September 11. We have learned it when it comes to the war on terrorism. Those who condemn Government and say, Let's keep shutting down agencies and Government employees right and left, have to understand the day may come, and soon, when we will need the American family working together as a government to do things that individuals cannot accomplish.

The second part of this is Hurricane Katrina has opened a door which has remained shut for too long. It is a door which reflects the reality of being poor in America. This door is now open 24/7 for all to see through. The poorest among us in America were the worst victims of Hurricane Katrina. Many others suffered, too, but as a group the poor suffered the most. We have to be mindful and sensitive to our responsibility to make this a great Nation of opportunity for the least among us, as well as those who have been blessed with prosperity and wealth. It is important our agenda, in the closing months of this session, reflect that reality as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I ask unanimous consent that when Senator BOXER completes her remarks, our distinguished colleague, Senator HATCH, the former chairman of the Ju-

diciary Committee, be recognized for remarks on Chief Justice Rehnquist's death.

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

#### HONORING CHIEF JUSTICE WILLIAM H. REHNQUIST

Mr. SESSIONS. Madam President, I will share a few personal thoughts about Chief Justice Rehnquist. I came to appreciate Justice Rehnquist as a young prosecutor. I was assistant U.S. attorney, tried a lot of cases and was involved in a lot of cases and had to read Supreme Court opinions on criminal law. I was impressed with his writings. It touched me in many ways. I felt he was speaking the truth when other Justices were missing and not understanding the reality of law enforcement in America.

This was in the mid-1970s, when our crime was increasing at an exponential rate. We had double-digit percentage increases in crime in the 1960s and 1970s. In the 1950s, we did not lock the door of our house, and we left our keys in the car. People did not worry about crime. It became a growing problem. At the same time crime was surging, the Warren Court handcuffed the police and their ability to deal with it.

Justice Rehnquist, during the Warren Court years, would often write dissents. Sometimes he would be the lone dissenter. I distinctly remember being in the U.S. Attorney's Office in Mobile, Alabama, reading an opinion and calling my colleagues to say: Look at this. At least one Justice understands the reality of crime and law enforcement in America.

He helped create a different approach to law and order in America. Instead of ruling on emotion and politics, he made his decisions based on the law and facts. In fact, before he left office, cases he was dissenting 8 to 1, he was winning a number of them 5 to 4 and 6 to 3. What an accomplishment to see that happen over a lifetime. I never would have thought it possible. I thought the trends were against that. Being young, I never thought we would see the pendulum swing back, but it did, and he played a key role in that.

From my observations as a member of the Department of Justice for nearly 15 years, as a member, now, of the Senate Judiciary Committee for 8 years, where I currently chair the Subcommittee on Administrative Oversight and the Courts, my humble opinion is Chief Justice Rehnquist is one of the greatest chief Justices ever to serve. Senator MCCONNELL said after John Marshall, but I don't know. I am not sure any have served more ably.

He was also a great Associate Justice. He wrote clean, succinct opinions that made sense. They were consistent with the law of our country and our heritage.

He came to the Court when the Warren Court was in full bloom and judicial activism was at its apex. In case

after case, he was the lone member of that Court to sound the alarm about the dangers that arise when a court detaches itself from a principled and honest commitment to the Constitution of the United States of America and the laws we passed. He saw the dangers in that, and he dissented many times—he joined with the majority many times, but he dissented many times—on matters of great principle in an intelligent and effective way.

He played a key role in the demise of judicial activism as a dominant view of the Court. By “judicial activism”—I will paraphrase Senator HATCH’s definition of it—it means when a judge allows their personal or political views about what is good policy or bad policy to affect their rulings in a case. It is not faithful to the Constitution when you twist the words of the Constitution or of a statute so they come out to mean what you would like them to in order to achieve the result that you prefer in a given case. Justice Rehnquist loved our Constitution, the one that we have, the good parts of it and the parts he may not agree with. He loved every section all and respected each one of them. He followed them and was faithful to them.

He understood liberty in America is dependent on order. Look what is happening, so sadly, in New Orleans: police are threatened, doctors and nurses could not get out to help or rescue people because order broke down. The Founders of our Republic never doubted the Government and the law enforcement of the United States of America. The States and counties and cities had to have certain authority to maintain order or we would never have liberty. This extreme commitment to libertarian views can undermine the basic order necessary to allow liberty to flourish in our individual capability first. He understood that very critically.

An example of the dangers he saw on the Court would be in death penalty cases. Chief Justice Rehnquist, as Associate Justice and as Chief, fully understood the Constitution makes at least eight references to capital crimes, to not being able to take someone’s life without due process; at least eight references were made in that great document to the death penalty. How could the Constitution declare the death penalty was unconstitutional when it absolutely approved it?

Two Justices dissented in every single death penalty case, saying they thought it was cruel and unusual punishment. What a weird, unprincipled dangerous interpretation of the Constitution. Justice Rehnquist stood against that tide, often as a lone Associate Justice.

Until now, people have come to realize that the Constitution and laws of this country allow a State or the Federal Government to have a death penalty, if they choose to have it. If you do not like that, take it to your legislative branch. The Constitution does

not prohibit it, for heaven’s sake. The Constitution explicitly authorizes it.

He had a good understanding of church and State. I remember Senator REID, the distinguished majority leader now, when he was the assistant leader under Thomas Daschle during that year when they were in the majority, and the Ninth Circuit struck down the Pledge of Allegiance, he criticized the Ninth Circuit. I have been a big critic of the Ninth Circuit, but I remember making remarks at that time saying as big a critic of the Ninth Circuit and as much of a critic of their striking down the Pledge of Allegiance, I have to say many Supreme Court rulings on separation of church and State are so extreme that could well be justified under language of the United States Supreme Court. The Supreme Court has given us a very confused jurisprudence on what is a legitimate separation of church and State in America.

We got to the point in one case, the Jaffree case from Alabama, the Supreme Court, by a 6 to 3 majority, struck down a moment of silence in a classroom. Justice Rehnquist dissented in that case, as he consistently dissented against some of the confused thinking that was there.

If this court had followed Justice Rehnquist’s thoughts and opinions on the question of separation of church and State, we would not have the confusion we have today. We would not have one case where the Ten Commandments in Texas are OK and another case in Alabama where the Ten Commandments are not OK. What kind of jurisprudence is that? We need to get that straight. The Court has failed, in my view, in establishment clause jurisprudence. But Chief Justice Rehnquist has been a consistent and sound and reasonable voice on how to strike the proper balance. We need to go back and continue to read those opinions and see if we cannot make them correct.

He also was a student of America. He wrote a number of books, grand inquests about impeachments, before we had the Clinton impeachment case in this body. He wrote a book, “All The Laws But One,” that deals with the rule of law in America in a time of crisis, and dealt with the Civil War and other times in our country. He was a historian who understood America, understood our exceptional nature, our commitment to law and the Constitution. He understood that deeply. Every day when he went to work, every opinion he ever wrote was consistent with his view and respect for America, her heritage, her rule of law, and her Constitution.

He understood that States have certain powers in our country. He understood that the Federal Government, through the commerce clause, has broad power, but there are limits to the reach of the commerce clause. It does not cover every single matter the United States Senate may desire to legislate on, to the extent that the federal government controls even simple,

discreet actions within a State. He re-established a respect for State law and State sovereignty through a number of his federalism opinions.

Madam President, we have lost one of the Nation’s great Justices, a man who respected our Constitution, gave his life to his country, his whole professional career. All of us should be proud of that service and honor his memory.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

#### HURRICANE KATRINA

Mrs. BOXER. Madam President, I rise today with a heavy heart. We have all watched in horror as the Gulf Coast has been struck by what could be called the worst natural disaster in our history.

Over the weekend, Chief Justice Rehnquist, who served our Court and country with such distinction for 33 years, and showed such bravery in the last months of his life, passed away.

We have now lost nearly 2,000 young men and women in Iraq, and we still do not have, in my opinion, a credible plan, a mission, a timetable to achieve success and bring our troops home. Gas prices are putting horrible strains on most Americans.

There is a tremendous amount of anxiety in America today. I feel it when I go home to California. We must confront it immediately in the Senate, in the House, and, yes, at the White House.

With one party controlling the entire Government, there is pressure in some quarters to be silent and just let mistakes and misplaced priorities take their toll.

Well, I do not agree with that mindset. I am going to say what I think. And even more important, I am going to do everything I can with my colleagues on both sides of the aisle to help get our country moving in the right direction again.

Lives hang in the balance in this disaster and, God forbid, in the next one. It is difficult to put into words how heartbroken we all are for Americans affected by Hurricane Katrina. Thousands of people have lost their lives. Far more have lost their homes, their jobs, their communities. Brave souls everywhere are still searching for some family members while trying to keep others alive and hopeful.

I even heard a doctor on CNN talking about being forced to make the impossible choice of whom to save and whom to leave behind to die.

Yes, the acts of bravery are being celebrated, as they should be—neighbor helping neighbor, churches filling in for FEMA, local law enforcement putting their own hardships aside to work 24 hours a day helping others.

But there are images, such as this one I show here, that leave us in tears. It shows a makeshift grave along the road—a makeshift grave. Somebody put a sheet over a body, and it looks