

As the chairman of the Subcommittee on Indian Education, Kennedy joined a few other Senate colleagues on a trip to several Alaska Native villages in April 1969. Kennedy recalls being stunned by the poverty and despair in the villages, many of which still lack basic sanitation and are plagued by high rates of sexual assault, domestic violence, and suicide. It affected Senator Kennedy so deeply that he found it difficult to “numb the pain.”

The course of Senator Kennedy’s life brought him many blessings and accomplishments. He was a father of three beautiful children and two step-children, a Harvard graduate, a nine-term Senator with the third longest time serving in the U.S. Senate in American history, a veteran of the Army, a talented football player who almost went pro but opted instead for a life of public service . . . the list goes on.

My condolences and blessings go out to his family, especially his wife and children. Despite Ted’s passing, his spirit lives on. There is little doubt in my mind that this spirit will inspire generations of our colleagues in the years ahead to take up his causes and ensure that the vulnerable in America, the often forgotten Americans who live in remote places like rural Alaska, are never forgotten.

Ted, thank you for your service.

COMMENDING SENATOR MEL MARTINEZ

Mr. ENZI. Mr. President, it is always a bittersweet moment when we have to say goodbye to a colleague who is retiring from the Senate. We are sorry to see them go, but we are also very appreciative of all they have brought to our deliberations during their years of service to the people of their home State and the Nation.

Mel Martinez is such a person—the kind who makes the Senate the great deliberative body that it is, for Mel has a great story to tell of his life and how he came to the United States to pursue his own version of the American dream.

If you would have told Mel when he was young that he would someday serve as an elected official in the U.S. Government, I am not sure he would have believed you. He began his life in a small city in Cuba, under the repressive regime of Fidel Castro. At the age of 15 he escaped and began to pursue his destiny in the United States. At every stage of his life he was determined to do everything he could to make a difference. Looking back, I think it’s clear he has succeeded beyond his wildest dreams.

From the time he first arrived in the United States, Mel was grateful for the opportunities that were available to him, and he was determined to give something back to show his appreciation for them.

He began in his own backyard when he served as mayor of Orange County.

As a former mayor myself, I know how difficult a job that can be. For Mel, it was a chance to make the lives of his neighbors and fellow citizens better and that became his focus and his top priority.

He did a good job and quickly earned the respect and support of his fellow townspeople. He also caught the attention of then President-elect George Bush who was looking for someone to serve in his Cabinet who had experience dealing with housing issues and the problems that were facing our cities and towns. That is something that Mel had been dealing with in Florida, so he became the first Cuban American appointed to a President’s Cabinet when he was named to serve as our Secretary of Housing and Urban Development.

Soon after Mel was sworn in he found himself in the middle of a challenge as great as any that had ever been faced by a Cabinet Secretary before. In the aftermath of the terrorist attacks of September 11, Mel was assigned the responsibility of working on the reconstruction of lower Manhattan.

Then, having served on both the local and national level, Mel then decided to take on another challenge—representing the people of Florida in the Senate. Mel proved to more than up to the task as he has taken on a variety of issues and served on several different committees. Through it all, he has worked hard to put his principles and values into practice every day and he has a great deal to show for his service to the people of Florida in the Senate.

In the years to come, I will always remember Mel’s remarkable life story that stems from the years he spent in Cuba living under a dictatorship. They were a matter of great interest to me when I was a student, but for him, it was his life. While I had only read about and watched the drama unfold during my years at George Washington University, Mel had lived it. It was a time that helped to shape his character and mold his destiny and make him appreciate the great gift of citizenship that far too many of us take for granted.

Mel has also impressed me as a man of great faith who takes his relationship with God very seriously. He shared his belief with us at one of our Prayer Breakfasts and he impressed us all with his great sincerity and his unshakeable belief that God had placed him where He needed him and that was why he was in the Senate. He saw it as an opportunity to serve God and the people back home in Florida, as well as those he left behind in Cuba and many more just like them all over the world.

Too often when we say goodbye to one of our fellow members, we forget that there is just as much life outside of the beltway as there is inside it. Our focus on Washington and our work in the Senate sometimes makes us think that this is the only place where we can pursue our dreams and make a difference in the world around us. Mel is

proof positive that there are many ways that we can make this a better world and in the years to come, as this chapter in his life ends and another begins, I have no doubt we will see Mel continue his efforts to address the problems of this world to ensure that those who have lived for too long in fear and oppression in Cuba and all over the world will someday claim the rights and freedoms we all cherish as their own.

Good Luck, Mel. I hope you and Kitty enjoy the years to come. Together you have made a great team and we know there is still much more to come in this great adventure of your lives. Good luck and God bless.

Mr. CORNYN. Mr. President, I join my colleagues in appreciation and admiration of Senator Mel Martinez.

Mel lived the first 15 years of his life under communist dictatorship in Cuba. That experience gave him a special appreciation for the blessings of liberty. As Mel’s own career in public service took him from Florida to Washington, he never forgot the people living under totalitarianism in his homeland. And he never wavered in his conviction that the people of Cuba deserved the same rights as the rest of us, especially the rights to choose our leaders, worship as we please, and live in freedom.

Mel distinguished himself as a lawyer in central Florida, then won elective office as mayor of Orlando, and was appointed by President Bush to serve as his first Secretary of Housing and Urban Development. Secretary Martinez helped the people of lower Manhattan rebuild after the terrorist attacks of September 11, 2001, and he worked to expand opportunities for home owners nationwide. Mel was proud that he was the first Cuban-American to ever serve in a President’s Cabinet.

Mel was also the first Cuban-American to serve in the U.S. Senate. In this Chamber, he raised his voice to strengthen our national defense, especially the Navy’s shipbuilding program. He supported the development of America’s natural resources in an environmentally responsible way. He had a heart for victims of Alzheimer’s disease and their families, and supported greater Federal research funding to help find a cure.

Senator Martinez and I shared a concern about waste, fraud, and abuse in Medicare and Medicaid. So earlier this year, he and I introduced legislation to do something about it. The Seniors and Taxpayers Obligation Protection Act or the STOP Act would give Federal agencies greater tools and authority to detect waste, fraud, and abuse before they happen. The STOP Act has sponsors on both sides of the aisle, and I believe its provisions should be a part of our efforts to reform our health care system.

Mel served less than a full term in the Senate, but he has helped shape legislation that will govern our Nation for years to come. He and his wife

Kitty are now back home in central Florida, and Sandy and I wish them both the very best.

Ms. MURKOWSKI. Mr. President, I rise to remember a good friend who is leaving the Senate after a career of public service, Senator Mel Martinez.

Mel Martinez came to the Senate in 2005 after serving as Secretary of Housing and Urban Development under President George W. Bush. Senator Martinez was the first Cuban American to serve in the U.S. Senate. Born in Cuba, Senator Martinez arrived in the United States at age 15.

During his tenure as Secretary of Housing and Urban Development, Mel Martinez addressed the National Congress of American Indians, pledging to strengthen the government to government relationship with tribes in the Federal Indian programs administered by his agency. He was keenly interested in ameliorating the third world housing conditions that exist in the Native villages of rural Alaska. Alaska's tribe and tribal housing authorities benefit greatly from Federal funding available under the Native American Housing Assistance and Self Determination Act and other Federal housing programs, which were strengthened under Senator Martinez' leadership at HUD.

Despite the fact that the States we represent are as far away geographically as States can be, we have always been good friends.

I was proud to serve with Senator Martinez on the Energy and Natural Resources Committee. Senator Martinez was a close ally on energy issues, and he was always a fierce advocate for the interests of his Floridian constituents. We shared a common interest in promoting Federal energy efficiency standards, responsible nuclear waste storage, and we worked together on the 2005 Energy Policy Act. He was a tough bargainer on the more recent 2007 Energy Independence and Security Act as he aggressively pursued the interests of his constituents with respect to Federal Outer Continental Shelf energy development.

I wish Mel Martinez and his wife Kitty the best of luck in their future endeavors.

MILITARY NOMINATIONS

Mr. LEVIN. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations:

Those identified with a single bullet • are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again:

MILITARY NOMINATIONS PENDING WITH THE SENATE ARMED SERVICES COMMITTEE WHICH ARE PROPOSED FOR THE COMMITTEE'S CONSIDERATION ON OCTOBER 8, 2009

• LTG David M. Rodriguez, USA to be lieutenant general and Commander, International Security Assistance Force Joint Command (Reference No. 1067)

ENERGY AND WATER APPROPRIATIONS REQUEST

Mr. BOND. Mr. President, it has come to my attention that my name was incorrectly added next to the line item "St. John's Bayou and New Madrid Floodway" Project in the conference Report of the fiscal year 2010 Energy and Water Resources Development Appropriations Act. I ask that the RECORD reflect that this is a mistake. I did not make a request for funding for this project and my name should not be attached to this project.

PROTECTING OLDER WORKERS AGAINST DISCRIMINATION ACT

Mr. HARKIN. Mr. President, on Tuesday, October 6, I introduced S. 1756, the Protecting Older Workers Against Discrimination Act.

To appreciate the need for this bill, consider the case of a hard-working Iowan named Jack Gross. Mr. Gross gave the prime of his life, a quarter century of loyal service, to one company. How did that company reward him for his dedication and hard work? It brazenly demoted him and other employees over the age of 50, and gave their jobs to a younger employee.

Expressly to prevent this kind of discrimination, over 40 years ago Congress passed the Age Discrimination in Employment Act, ADEA. The ADEA, which made it unlawful to discriminate on the basis of age, was modeled on and used the same language as title VII of the Civil Rights Act of 1964, the law that prohibits employment discrimination on the basis of race, sex, national origin and religion.

When Mr. Gross sought to enforce his rights, a jury of Iowans heard the facts and found that his employer discriminated against him because of age. That jury awarded him almost \$47,000 in lost compensation.

The case was ultimately appealed to the Supreme Court. This past June, in *Gross v. FBL Financial, Inc.*, five Justices rewrote the rules—indeed, effectively rewrote the law—and ruled against Mr. Gross and other older workers. In doing so, the Court made it harder for those with legitimate age discrimination claims to prevail under the ADEA.

For decades, the law was clear. In 1989, in *Price Waterhouse v. Hopkins*, the Court ruled that if a plaintiff seeking relief under title VII of the Civil Rights Act demonstrated that discrimination was a "motivating" or "substantial" factor behind the employer's action, the burden shifted to the employer to show it would have taken the same action regardless of the plaintiff's membership in a protecting class. As part of the Civil Rights Act of 1991, Congress formally codified the "motivating factor" standard with respect to title VII.

Because the Age Discrimination in Employment Act uses the same language as title VII, was modeled off it, and had been interpreted consistent with the Civil Rights Act of 1964, courts correctly and consistently held

that a victim bringing suit under the ADEA need only show that membership in a protected class was a "motivating factor" in an employer's action—the same standard for plaintiffs claiming discrimination on the basis of race, sex, religion, or national origin. If an employee showed that age was one factor in an employment decision, the burden was on the employer to show it had acted for a legitimate reason other than age.

In *Gross*, the Court—addressing a question on which it did not grant certiorari—tore up this settled decades old standard. In its place, the Court applied an entirely new standard that makes it prohibitively difficult for a victim to prove age discrimination. According to the Court, a victim of age discrimination bears the full burden of proving that age was not only a motivating factor but the decisive factor.

This extremely high burden radically undermines older workers' ability to hold employers accountable. Bear in mind that unlawful discrimination is often difficult to detect. Obviously, those who discriminate do not often admit they are acting for discriminatory reasons. To the contrary, they go out of their way to conceal their true intent. Discrimination cases rarely involve a smoking gun.

The reality, however, is that while employers rarely post signs saying "older workers need not apply," ageism in the workforce does indeed exist, as Mr. Gross and his colleagues learned the hard way. Indeed, according to an AARP study, 60 percent of older workers have reported that they or someone they know has faced age discrimination in the workplace.

Countless thousands of American workers who are not yet ready to voluntarily retire find themselves jobless or passed over for promotions because of age discrimination. Older workers often face ugly, baseless stereotypes: That they are not as productive as younger workers; that they cannot learn new skills; that they somehow have a lesser need for income to provide for their families.

These stereotypes—and the discrimination they feed—are wrong and immoral. This is also harmful to our economy, inasmuch as it deprives us of the skills and talents of millions of older workers.

The timing of the Court's decision is particularly troubling. As our economy continues to struggle, older workers are being hit particularly hard. According to the Department of Labor, there are 2 million unemployed workers over the age of 55. This is an all-time high since the Bureau of Labor Statistics began matching age and unemployment in 1948. According to the Equal Employment Opportunity Commission, in 2008 nearly 25,000 age discrimination claims were filed, a 30-percent increase over 2007. Given the stereotypes that older workers face, it is no surprise that, on average they remain unemployed twice as long as all unemployed workers.

The Protecting Older Workers Against Discrimination Act reverses