

those around him. I wish him all the best in his retirement, and sincerely hope that the next generation of Americans contains a few Bob Brays.

#### BICENTENNIAL OF DR. EPHRAIM McDOWELL'S HISTORIC SURGERY

Mr. McCONNELL. Madam President, the Commonwealth of Kentucky has many heroes. Yet only two have been granted significant prominence to have their likeness stand on permanent display within the halls of the U.S. Capitol building.

The Great Compromiser, Henry Clay, is one of those who have earned such distinction. And the second statue recognizes the contributions of Dr. Ephraim McDowell to modern medicine. While his might not be a household name, Dr. McDowell's contribution to surgical procedure is nonetheless momentous, making him one of only two Kentuckians in history to be recognized in the Capitol.

It was 200 years ago that Dr. McDowell performed the world's first successful ovariectomy. What Mrs. Jane Todd Crawford of Green County, KY, mistook for twins, Dr. McDowell correctly diagnosed as a 22-pound ovarian tumor.

Mrs. Crawford begged Dr. McDowell to prevent her from dying a slow and painful death. The young doctor explained that her only option was to have experimental surgery, and he went further in explaining that none who had previously undergone such surgery had survived. Undeterred, Mrs. Crawford pressed Dr. McDowell to perform the surgery and made the 60-mile horseback ride to Danville, KY, on December 13, 1809.

By the end of the 25-minute procedure, which was performed without anesthetic, Mrs. Crawford's tumor had been removed and she was able to make an uncomplicated recovery. She would go on to live another 32 years. In time, Dr. McDowell would go on to perform nearly a dozen more such procedures, and his meticulous notes of performing a successful abdominal surgery would be reviewed and taught on two continents.

In those notes, he wrote about his first success:

Having never seen so large a substance extracted, nor heard of an attempt, or success attending any operation such as this required, I gave to the unhappy woman information of her dangerous situation. The tumor appeared full in view, but was so large we could not take it away entire. We took out fifteen pounds of a dirty, gelatinous-looking substance. After which we cut through the fallopian tube, and extracted the sac, which weighed seven pounds and one-half. In five days I visited her, and much to my astonishment found her making up her bed.

Madam President, it is not just Mrs. Crawford who owes a debt of gratitude to Dr. Ephraim McDowell. Indeed, because of his efforts and courage, the entire field of medicine made great advancements and society as a whole is

the better. With the bicentennial of this remarkable accomplishment soon approaching, I thought it fitting for us to take a moment and remember this man who Kentucky rightfully honors with a place in the U.S. Capitol.

#### COMMERCE, JUSTICE, SCIENCE APPROPRIATIONS

##### ECONOMIC DEVELOPMENT ADMINISTRATION

Mr. BROWN. Madam President, I would like to engage my colleague, the Senator from New York, in a colloquy.

I would first like to take this opportunity to commend Senator MIKULSKI and Senator SHELBY and their hard working staff for crafting a responsible, commonsense funding measure, the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2010.

I would like to highlight one piece of this bill, and that is the funding allocation for the Economic Development Administration. Madam President, the country is facing the highest unemployment rate we have seen in more than 20 years. There are too many hard-working Americans without a paycheck.

Mrs. GILLIBRAND. That is true in my State, as I know it is in the Senator's. Last week, the Labor Department reported 263,000 more jobs lost in September, leaving 15.1 million workers unemployed. The number of underemployed is even greater.

Funds for EDA are critical to our economic recovery, especially funds for Economic Adjustment Assistance, which is more flexible spending that enables EDA to respond quickly and forcefully to regions hit with an economic catastrophe.

Mr. BROWN. I agree with Senator GILLIBRAND that the Economic Adjustment Assistance account is critical for responding to sudden and severe economic hardship in a region. One proven strategy for economic development in these regions is business incubators.

In Ohio, there are more than 30 business incubators that help foster regional economic development and spur small business expansion. Recent studies show that business incubators are an effective public-private approach that produces new jobs at a low cost to the government.

Mrs. GILLIBRAND. Yes, I thank the Senator. In fact, a 2008 study conducted for the Economic Development Administration found that for every \$10,000 in EDA funds invested in business incubators, an estimated 47–69 local jobs are generated. In rural areas, business incubator projects are the most effective type of EDA project.

The National Business Incubation Association, NBIA, estimates that in 2005 business incubators supported more than 27,000 start-up companies providing full-time employment to more than 100,000 workers—generating more than \$17 billion in annual revenue.

NBIA also points to research showing that every dollar of Federal funds de-

voted to a business incubator generates approximately \$30 in local tax revenue.

Mr. BROWN. I was proud to introduce with the Senator the Business Incubator Promotion Act last month, which defines the types of incubator services proven to be most effective, and targets Federal funds to the most economically distressed regions.

It is my understanding that the CJS appropriations legislation provides \$200 million to EDA, with \$90 million of that to Economic Adjustment Assistance. I would like to see an additional \$20 million in this account to promote the revitalization of economically distressed communities and encourage the development of business incubators. This increase would mean jobs—for Ohio, New York, and for other States with high unemployment.

Mrs. GILLIBRAND. I understand the administration would also like to see these funds increased. In fact, in the Statement of Administration Policy issued for the CJS Appropriations measure, the administration urges Congress to provide increased funding to fully implement the administration's proposals to promote regional innovation clusters and create a business incubator network.

Mr. BROWN. I would like to join Senator GILLIBRAND in working with Senator MIKULSKI and Senator SHELBY in boosting these funds. Now more than ever, Congress must give EDA the tools to help entrepreneurs drive the economic revitalization of towns, cities, and regions all across Ohio, New York, and the country. The CJS Appropriations is an important step, one upon which to build.

Again, I commend the work of Senator MIKULSKI and Senator SHELBY and look forward to working with them to increase funding for EDA in conference.

##### AMENDMENT NO. 2669

Mr. GRAHAM. Madam President, I am disappointed that on November 5, 2009, the Senate voted to table my amendment to prohibit the use of funds to prosecute individuals involved in the September 11, 2001, attacks in article III courts. As I stated at the time of the vote, it would be a grave mistake to prosecute these detainees in civilian court instead of the newly revamped military commissions.

Two hundred forty-nine family members of the victims of the September 11 attacks wrote a letter in support of my amendment. They know better than anyone that the attacks that took their loved ones were war crimes and that criminalizing this war would be dangerous and unwise.

I would like to submit their letter in support of my amendment for the record, and I would like to give a special thanks to Debra Burlingame for her leadership on this issue. While I am disappointed in the vote on this amendment, I hope that in the future we will heed the counsel of those who lost the most in the terrible attacks on our country—the family members of 9/11 victims.

NOVEMBER 5, 2009.

U.S. SENATE,  
U.S. Capitol,  
Washington, DC.

DEAR SENATORS: On September 11, 2001, the entire world watched as 19 men hijacked four commercial airliners, attacking passengers and killing crew members, and then turned the fully-fueled planes into missiles, flying them into the World Trade Center twin towers, the Pentagon and a field in Shanksville, Pennsylvania. 3,000 of our fellow human beings died in two hours. The nation's commercial aviation system ground to a halt. Lower Manhattan was turned into a war zone, shutting down the New York Stock Exchange for days and causing tens of thousands of residents and workers to be displaced. In nine months, an estimated 50,000 rescue and recovery workers willingly exposed themselves to toxic conditions to dig out the ravaged remains of their fellow citizens buried in 1.8 million tons of twisted steel and concrete.

The American people were rightly outraged by this act of war. Whether the cause was retribution or simple recognition of our common humanity, the words "Never Forget" were invoked in tearful or angry recitation, defiantly written in the dust of Ground Zero or humbly penned on makeshift memorials erected all across the land. The country was united in its determination that these acts should not go unmarked and unpunished.

Eight long years have passed since that dark and terrible day. Sadly, some have forgotten the promises we made to those whose lives were taken in such a cruel and vicious manner.

We have not forgotten. We are the husbands and wives, mothers and fathers, sons, daughters, sisters, brothers and other family members of the victims of these depraved and barbaric attacks, and we feel a profound obligation to ensure that justice is done on their behalf. It is incomprehensible to us that members of the United States Congress would propose that the same men who today refer to the murder of our loved ones as a "blessed day" and who targeted the United States Capitol for the same kind of destruction that was wrought in New York, Virginia and Pennsylvania, should be the beneficiaries of a social compact of which they are not a part, do not recognize, and which they seek to destroy: the United States Constitution.

We adamantly oppose prosecuting the 9/11 conspirators in Article III courts, which would provide them with the very rights that may make it possible for them to escape the justice which they so richly deserve. We believe that military commissions, which have a long and honorable history in this country dating back to the Revolutionary War, are the appropriate legal forum for the individuals who declared war on America. With utter disdain for all norms of decency and humanity, and in defiance of the laws of warfare accepted by all civilized nations, these individuals targeted tens of thousands of civilian non-combatants, brutally killing 3,000 men, women and children, injuring thousands more, and terrorizing millions.

We support Senate Amendment 2669 (pursuant to H.R. 2847, the Commerce, Justice, Science Appropriations Act of 2010), "prohibiting the use of funds for the prosecution in Article III courts of the United States of individuals involved in the September 11, 2001 terrorist attacks." We urge its passage by all those members of the United States Senate who stood on the senate floor eight years ago and declared that the perpetrators of these attacks would answer to the American people. The American people will not understand why those same senators now vote to

allow our cherished federal courts to be manipulated and used as a stage by the "mastermind of 9/11" and his co-conspirators to condemn this nation and rally their fellow terrorists the world over. As one New York City police detective, who lost 60 fellow officers on 9/11, told members of the Department of Justice's Detainee Policy Task Force at a meeting last June, "You people are out of touch. You need to hear the locker room conversations of the people who patrol your streets and fight your wars."

The President of the United States has stated that military commissions, promulgated by congressional legislation and recently reformed with even greater protections for defendants, are a legal and appropriate forum to try individuals captured pursuant to the 2001 Authorization for the Use of Military Force Act, passed by Congress in response to the attack on America. Nevertheless, on May 21, 2009, President Obama announced a new policy that Al-Qaeda terrorists should be tried in Article III courts "whenever feasible."

We strongly object to the President creating a two-tier system of justice for terrorists in which those responsible for the death of thousands on 9/11 will be treated as common criminals and afforded the kind of platinum due process accorded American citizens, yet members of Al Qaeda who aspire to kill Americans but who do not yet have blood on their hands, will be treated as war criminals. The President offers no explanation or justification for this contradiction, even as he readily acknowledges that the 9/11 conspirators, now designated "unprivileged enemy belligerents," are appropriately accused of war crimes. We believe that this two-tier system, in which war criminals receive more due process protections than would-be war criminals, will be mocked and rejected in the court of world opinion as an ill-conceived contrivance aimed, not at justice, but at the appearance of moral authority.

The public has a right to know that prosecuting the 9/11 conspirators in federal courts will result in a plethora of legal and procedural problems that will severely limit or even jeopardize the successful prosecution of their cases. Ordinary criminal trials do not allow for the exigencies associated with combatants captured in war, in which evidence is not collected with CSI-type chain-of-custody standards. None of the 9/11 conspirators were given the Miranda warnings mandated in Article III courts. Prosecutors contend that the lengthy, self-incriminating tutorials Khalid Sheikh Mohammed and others gave to CIA interrogators about 9/11 and other terrorist operations—called "pivotal for the war against Al-Qaeda" in a recently released, declassified 2005 CIA report—may be excluded in federal trials. Further, unlike military commissions, all of the 9/11 cases will be vulnerable in federal court to defense motions that their prosecutions violate the Speedy Trial Act. Indeed, the judge presiding in the case of Ahmed Ghailani, accused of participating in the 1998 bombing of the American Embassy in Kenya, killing 212 people, has asked for that issue to be briefed by the defense. Ghailani was indicted in 1998, captured in Pakistan in 2004, and held at Guantanamo Bay until 2009.

Additionally, federal rules risk that classified evidence protected in military commissions would be exposed in criminal trials, revealing intelligence sources and methods and compromising foreign partners, who will be unwilling to join with the United States in future secret or covert operations if doing so will risk exposure in the dangerous and hostile communities where they operate. This poses a clear and present danger to the public. The safety and security of the American

people is the President's and Congress's highest duty.

Former Attorney General Michael Mukasey recently wrote in the Wall Street Journal that "the challenges of terrorism trials are overwhelming." Mr. Mukasey, formerly a federal judge in the Southern District of New York, presided over the multi-defendant terrorism prosecution of Sheikh Omar Abdel Rahman, the cell that attacked the World Trade Center in 1993 and conspired to attack other New York landmarks. In addition to the evidentiary problems cited above, he expressed concern about courthouse and jail facility security, the need for anonymous jurors to be escorted under armed guard, the enormous costs associated with the use of U.S. marshals necessarily deployed from other jurisdictions, and the danger to the community which, he says, will become a target for homegrown terrorist sympathizers or embedded Al Qaeda cells.

Finally, there is the sickening prospect of men like Khalid Sheikh Mohammed being brought to the federal courthouse in Lower Manhattan, or the courthouse in Alexandria, Virginia, just a few blocks away from the scene of carnage eight years ago, being given a Constitutionally mandated platform upon which he can mock his victims, exult in the suffering of their families, condemn the judge and his own lawyers, and rally his followers to continue jihad against the men and women of the U.S. military, fighting and dying in the sands of Iraq and the mountains of Afghanistan on behalf of us all.

There is no guarantee that Mr. Mohammed and his co-conspirators will plead guilty, as in the case of Zacarias Moussaoui, whose prosecution nevertheless took four years, and who is currently attempting to recant that plea. Their attorneys will be given wide latitude to mount a defense that turns the trial into a shameful circus aimed at vilifying agents of the CIA for alleged acts of "torture," casting the American government and our valiant military as a force of evil instead of a force for good in places of the Muslim world where Al Qaeda and the Taliban are waging a brutal war against them and the local populations. For the families of those who died on September 11, the most obscene aspect of giving Constitutional protections to those who planned the attacks with the intent of inflicting maximum terror on their victims in the last moments of their lives will be the opportunities this affords defense lawyers to cast their clients as victims.

Khalid Sheikh Mohammed and his co-conspirators are asking to plead guilty, now, before a duly-constituted military commission. We respectfully ask members of Congress, why don't we let them?

Respectfully submitted,  
(Signed by 249 Family members).

#### IRAQ RECONSTRUCTION

Mr. LIEBERMAN. Madam President, I wish to commemorate the sixth anniversary of what is known today as the Office of the Special Inspector General for Iraq Reconstruction. Six years ago, on November 6, 2003, President Bush signed Public Law 108-106, the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan. The reconstruction effort at the time was under the direction of the Coalition Provisional Authority, CPA, and Congress, appropriately, provided for an Inspector General of the Authority to oversee the CPA's expenditures.