

use in the CIA program under Common Article 3 of the Geneva Conventions, the Detainee Treatment Act, and the War Crimes Act.

The July 2007 opinion includes extensive legal analysis of the war crimes added by the MCA, U.S. constitutional law, the treaty obligations of the United States, and the legal decisions of foreign and international tribunals. The July 2007 opinion does not include analysis of the anti-torture statute but rather incorporates by reference the analysis of the May 2005 opinions that certain proposed techniques do not violate the anti-torture statute, either individually or combined.

In considering "traditional executive behavior and contemporary practices" under the substantive due process standard embodied in the Detainee Treatment Act, OLC considered similar sources to those considered in the May 2005 opinion on Article 16. In addition, OLC examined the legislative history of the MCA, which the President had sought, in part, to ensure that the CIA program could go forward following Hamdan, consistent with Common Article 3 and the War Crimes Act. OLC observed that, in considering the MCA, Congress was confronted with the question of whether the CIA should operate an interrogation program for high value detainees that employed techniques exceeding those used by the U.S. military but that remained lawful under the anti-torture statute and the War Crimes Act. OLC concluded that while the passage of the MCA was not conclusive on the constitutional question as to whether the program "shocked the conscience," the legislation did provide a "relevant measure of contemporary standards" concerning the CIA program and suggested that Congress had endorsed the view that the CIA's interrogation program was consistent with contemporary practice.

Because waterboarding was not among the authorized list of techniques, the 2007 OLC opinion did not address the legality of waterboarding. OLC therefore has not considered the legality of waterboarding under either of the two provisions that have been applied to the CIA's treatment of detainees since the passage of the Detainee Treatment Act in December of 2005: Common Article 3 of the Geneva Conventions and the War Crimes Act, as amended by the MCA.

PRESENT CIRCUMSTANCES

On January 30, 2008, at a hearing of the Senate Judiciary Committee on Oversight of the Department of Justice, the Attorney General disclosed that waterboarding was not among the techniques currently authorized for use in the CIA program. He therefore declined to express a view as to the technique's legality. The Attorney General also stated that for waterboarding to be authorized in the future, the CIA would have to request its use, the CIA Director "would have to ask me, or any successor of mine, if its use would be lawful, taking into account the particular facts and circumstances at issue, including how and why it is to be used, the limits of its use and the safeguards that are in place for its use," and the President would have to address the issue.

In February 2008, in testimony before this Committee, the CIA Director publicly disclosed that waterboarding had been used on three detainees, as previously described. At that same hearing, the Director of National Intelligence (DNI) testified that waterboarding was not currently a part of the CIA's program, and that if there was a reason to use such a technique, the Director of the CIA and the Director of National Intelligence would have to agree whether to move forward and ask the Attorney General for a ruling on the legality of the specifics of

the situation. The Committee also discussed the CIA's interrogation program with those two officials in closed session.

Although waterboarding was no longer a technique authorized for use in the CIA program, and the Attorney General and DNI testified in 2008 that a new legal opinion based on current law would be required before it could be used again, the May 2005 opinions on the legality of waterboarding under the anti-torture statute and Article 16 of the Convention Against Torture (the legal standards subsequently embodied in the DTA) remained precedents of the Office of Legal Counsel at the time of the Attorney General's and DNI's 2008 testimony.

On January 22, 2009, the President issued Executive Order 13491 on "Ensuring Lawful Interrogations." The Executive Order revoked Executive Order 13440, limited the interrogation techniques that may be used by officers, employees, or other agents of the United States Government, and established a Special Interagency Task Force on Interrogation and Transfer Policies to report recommendations to the President. With respect to prior interpretations of law governing interrogation, section 3(c) of Executive Order 13491 directed that, unless the Attorney General provides further guidance, officers, employees, and other agents of the United States Government may not rely on interpretations of the law governing interrogations issued by the Department of Justice between September 11, 2001, and January 20, 2009. ●

HONORING OUR ARMED FORCES

CORPORAL DONTÉ JAMAL WHITWORTH

Mr. BAYH. Mr. President, I rise today with a heavy heart to honor the life of Marine Cpl Donte Jamal Whitworth from Noblesville, IN. Donte was 21 years old when he lost his life on February 28, 2009, from injuries sustained from a vehicular accident near Al Taquddum Air Base in Al Anbar Province, Iraq. He was a member of Combat Logistics Regiment 15, 1st Marine Logistics Group, Marine Corps Air Station of Yuma, AZ.

Donte, a 2005 graduate of Noblesville High School, joined the Marines immediately after graduation, eager to serve his country. While deployed, he commanded supply convoys transporting goods between U.S. military bases in Iraq. Donte was a dedicated basketball fan who always had a smile on his face. Born into a family of marines, he was proud to embrace the tradition and become a member of our country's Armed Forces. Scheduled to return home in March, Donte planned on reenlisting after his tour was complete.

Today, I join Donte's family and friends in mourning his death. Donte will forever be remembered as a loving son, grandson, and friend to many. He is survived by his mother, Carla Plowden; father, Daniel Whitworth; step-father, Kerry McGee; grandparents, Robert and Catherine Williams; and a host of other relatives, friends, and fellow marines.

While we struggle to express our sorrow over this loss, we can take pride in the example Donte set as a dedicated soldier. Today and always, Donte will be remembered by family, friends, and fellow Hoosiers as a true American

hero, and we cherish the sacrifice he made while dutifully serving his country.

As I search for words to do justice to this valiant fallen soldier, I recall President Abraham Lincoln's words as he addressed the families of soldiers who died at Gettysburg:

We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.

This statement is just as true today as it was nearly 150 years ago, as we can take some measure of solace in knowing that Donte's heroism and memory will outlive the record of the words here spoken.

It is my sad duty to enter the name of Donte Jamal Whitworth in the official RECORD of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. I pray that Donte's family can find comfort in the words of the prophet Isaiah who said:

He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Donte.

SERGEANT BRADLEY MARSHALL

Mr. PRYOR. Mr. President, today I pay tribute to the life, achievements, and memory of SGT Bradley Marshall of Little Rock, AR. He gave his life on July 31, 2007, defending citizens of the United States and advancing democracy throughout the world.

Sergeant Marshall served in the 2nd Battalion, 377th Parachute Field Artillery Regiment, 4th Brigade Combat Team, Airborne, 25th Infantry Division, Fort Richardson, AK. His bravery on behalf of this Nation is heroic. His service, professionalism and allegiance to this country will continue to serve as the standard bearer for which to honor our great Nation.

Friends and family described Bradley as athletic and fun-loving. He was a loyal and valued member of his church, community, and Nation. As a husband and father, Bradley loved his family greatly and always cherished their time together. His wife of 17 years, Gina Marshall, said of him "Brad was the love of my life." His son Wesley remembers his dad stopping by his room each night to say, "I love you." Tanner, Marshall's other son, put together a slide show presenting hundreds of pictures of his father.

He touched many lives and was respected by everyone that knew him. Bradley was known as the dependable man who made sure things got done in his own quiet way such as cutting the grass at church, remodeling a home for his former high school coach, doing chores around the house, and helping with vacations for the family. Bradley's church named their new Brad Marshall Family Life Center in honor

of him and the sacrifice he gave to this country.

Mr. President, I ask that my colleagues join me in recognizing the sacrifice SGT Bradley Marshall and his family have given to protecting our freedom.

REMEMBERING ELISHA "RAY" NANCE

Mr. WARNER. Mr. President, I wish to pay appropriate tribute today to an American hero—Elisha "Ray" Nance—of Bedford, VA.

He passed away last Sunday at the age of 94, and memorial services are being held today.

Mr. Nance was the last surviving member of what has come to be known as "The Bedford Boys"—members of Company A, 116th Infantry, 29th Division.

Mr. Nance was among 38 National Guardsmen from the close-knit community of Bedford who were called to active service in World War II. On June 6, 1944, 19 were killed when they landed on Omaha Beach at the start of the D-day invasion. Two more died later.

"We Bedford boys," Nance recalled, "we competed to be in the first wave. We wanted to be there. We wanted to be the first on the beach," he would write as he recovered from his own severe wounds.

Bedford recorded 21 casualties out of 38 men who served, all from the same small town of 3,200 people located in central Virginia.

That overwhelming loss led to Bedford's selection as the site of the National D-day Memorial—a worthy project I was honored to support, both as a private citizen and as Virginia Governor.

But Ray Nance's public service did not end with his military service.

To honor his fallen brethren, Nance returned home to Bedford and helped reorganize Company A of the Virginia National Guard, and served as its first commander. He then built a career as a rural postal carrier, and served in the Elks.

At the end of his life, he was a proud resident of the Elks National Home in Bedford.

In recent years, he visited the D-day Memorial often to help teach younger generations about the service, courage and sacrifice demonstrated by "The Bedford Boys" and others of the "greatest generation."

Ray Nance's life and example demonstrate the very best qualities—and the responsibilities—of citizenship.

My thoughts and prayers are with his widow Alpha and their children, grandchildren and great-grandchildren. A grateful Commonwealth and Nation thanks them for their lifetime of support for Ray Nance—a hero—and the last of "The Bedford Boys."

NATIONAL WORKERS MEMORIAL DAY

Mr. CRAPO. Mr. President, today I wish to mark an anniversary, one that

was many tragic years in the making. According to the Idaho AFL-CIO, 35 Idaho workers were killed due to on the job injuries in 2007. Next Tuesday, April 28, is National Worker's Memorial Day, which celebrates the day the Occupational Safety and Health Act—OSHA—became law in 1970.

More than 30 years ago, in 1967 a construction worker in Nampa, ID, Louis Jose Archuleta, was killed in a jobsite accident. Louie and others were installing a sewer line, 35 feet deep, in sandy soil, when the soil caved in. It trapped Louie, and, although fellow workers and rescue crews worked diligently for two and a half hours, their efforts were hampered due to further collapses of cleared areas, and Archuleta did not survive.

But Louie and many other workers knew what they were facing. Just a week before the accident, Louie told his sister Victoria that it was the most dangerous job he had ever worked on. Safety inspectors were in the process of shutting the job down at the time of the accident, a process that, in 1967, took at least 5 days to shut down a job.

Louie was very active in the local labor union and served three terms—9 years—as president of Labor's Union Local No. 267 in Pocatello, ID. He was a strong advocate for a retirement system. As a result of the tragedy, the Idaho AFL-CIO joined the push for Federal legislation to protect workers, legislation that was later known as Occupational Safety and Health Act, OSHA.

With Louie, his family and the many others who have suffered due to worker safety issue, I am honored to recognize National Worker's Memorial Day, keeping in mind Louis Jose Archuleta and all fallen workers for their contribution to the infrastructure of the State of Idaho and the Nation and to the establishment of OSHA and much-needed increased worker safety standards.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. PRESIDENT, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heart-breaking and touching. While energy prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this

problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

My personal and family circumstances are good with regard to income and out-go. That being said, the price of fuel, whether diesel or gasoline, is still an outrage, but there is absolutely nothing the government should do about it directly. Yes, we should make a meaningful effort to develop alternative fuel sources and methods of transportation and even responsibly drill for our own oil and gas here at home. But, the minute [price controls are started], that is when all hell breaks loose and things go to hell in a handbasket. Please advise your colleagues to not impose a windfall profits tax on oil companies. That will be another direct tax on the American consumer, [even though many do not pay attention.] Most Americans will just continue to believe it is the oil companies that are the culprits because of what we hear on TV!

Please be smart about this. Let capitalism rule. Tell our "friends" in the Middle East to enjoy selling to China and India and let us become responsibly self-sufficient, like we should be. And, by the way, if oil were not traded as a futures commodity, I am betting the price would tank quickly and substantially. What do you think?

SCOTT, *Malad.*

Thank you for asking about how gasoline prices are affecting my family. The increase of energy costs has allowed my family to make conscious decisions, instead of acting on impulses. Our family is combining trips and errands. We are going with each other instead of separately and enjoying our new shared times. I am so disappointed when I reviewed the salaries of the big oil executives and found them arrogant when I watched them testifying before the Committee on C-SPAN. It looks to me like they pocketed the money and failed to improve their facilities.

I have been discouraged that not one of Idaho's Congressional delegation has asked my family to conserve one ounce of petroleum. I do not want a knee-jerk reaction to higher prices at the pumps and check-outs; I want examination, reviews and bipartisan recommendations. It seems the decisions made in hurry during the last eight years have caught up with us. Slow down and do what is right for America.

JUNE.

I am grateful that you have given us a chance to be able to express our frustrations and opinions on what is going on with the energy situation.

We moved to Idaho Falls from Utah four years ago because my husband was able to get a job, with his Bachelors degree, that paid more per year than I was making with a Masters degree teaching. The cost of living was lower than Utah, and we absolutely love the area. We bought our home, as a foreclosure, three years ago about six miles outside of Idaho Falls, in Iona. It was cheaper to buy a foreclosure than it was to rent an apartment.

We are not extravagant by any means. We try to conserve energy. We are fixing our home as fast and as cost-effective as we can, which has not been too fast. About a year ago, because all of our bills were going up and our paycheck was not, we made the decision that it was better to forego medical insurance for the family and put money away into a health savings account (HSA). Our reasoning is that we have to live day-to-day