

CLARIFYING CONGRESSIONAL
INTENT

Mr. PRYOR. Mr. President, I come to the floor today to talk about CPT Samson Luke, 33 years old, who lived in Greenwood, AR.

Captain Luke was one of those people who had many options in life. Fortunately for us, he made the decision to serve his country, and he did so with distinction. He was a field artillery officer who served on active duty in the Army from 2000 to 2007. Afterwards, he served in the Arkansas National Guard where he was a commander of the HHB 1-142nd field artillery. Here is a photo of him with his family. His family was very important to him.

He had been to Iraq on two different deployments, after which he was awarded the Bronze Star. As I said, he elected to stay on with the Arkansas National Guard. He served with distinction there. He told his wife, who is pictured here, that he felt he was truly at his best when he was leading men.

I want to talk about him for a moment because, quite frankly, the bean counters over at the Pentagon are trying to save a little money at his family's expense. So I want to talk about his passing away on January 10 of 2010—less than a year ago. It was a weekend where he was doing his required training weekend. He was authorized, because he lived so close to the post, to spend Saturday night with his wife and his four young children at his home instead of staying on the post. In fact, he wasn't authorized to stay on the post because he was so close to home. He had to be off post. The idea was he would return to the post the next morning and finish up his weekend on that Sunday, but he never woke up. While dealing with this tragedy, his wife was informed that her family would not receive his death benefits. From my standpoint, this is a classic case of getting pencil whipped by the government.

The Arkansas National Guard has stepped up. They have done everything they could do. They have run it through all the proper channels. They have been very supportive of making sure that Captain Luke's family gets his death benefits. I feel as though—and people in the Guard do as well—that they are entitled to have the death benefits, but it is out of their hands. The law states that death benefits are allocated if a soldier dies while remaining overnight at or “in the vicinity of the site of the inactive duty training.”

What I want to do with my amendment I am offering through the Defense authorization bill is clarify Congress's intent and make sure that the very tiny number of people who are in his shoes and his family will be entitled to these death benefits.

I spent a year working on this issue with the Army and with the Department of Defense and, again, the Arkansas National Guard has stepped up and they have been great, but we are at a

standstill over the DOD's interpretation of “vicinity.”

This is an important point that I want my colleagues to understand: Had Captain Luke stayed on base or had he stayed at a hotel at the taxpayers' expense or had he been traveling to or from his post—his training—the family would receive these benefits. In fact, the Guard has a policy that if a guardsman lives within so many miles of the post, he or she cannot stay on the post, they have to go home. They don't have arrangements for a person to stay there. They want the person to go home. This saves the government money by not putting people up in a hotel or whatever else they may have to do. When a person is on a National Guard training weekend, as Captain Luke was, that person is under orders for 48 continuous hours. Wherever they are sleeping, wherever they are traveling, whatever they are doing, they are on orders; they are on duty.

Captain Luke was on duty when he died. In fact, if his colonel had called him at 1 o'clock in the morning and said get over here, we need your help on something, he would have had to go over there. He was on duty. He was on orders. He would have done that. In fact, he would have gladly stayed on the post had they had provisions for him to do that, but it worked out in this case that he was able, because he lived so close, to stay with his wife and family.

Also, let me say this: Had he been on orders and gotten out—which, of course, would never have happened to him—but had a soldier like him gotten out and had he done something such as had a DUI that night, that soldier would have been subject to the code of military justice because he was on orders. But, nonetheless, Captain Luke died when he was on orders, and now the Pentagon is trying to deny him his death benefits.

What my amendment does is clarify congressional intent to ensure that servicemembers who live in the area or in the vicinity of their training site can return home to their families in the evening without losing benefits. Again, they are on orders; they remain on orders. This doesn't change anything along those lines; it just clarifies congressional intent. This is a gray area. We are trying to clarify the congressional intent.

This amendment will not bring back the Luke children's father and their mother's husband, but it will give them the benefits to which they are entitled.

I think we can do better for our soldiers' families. When we look at Miranda, Miller, Macklin, Larkin, and Landis Luke in this photograph, we know that this is a very patriotic family and this is a group of people who should be compensated for his loss.

Abraham Lincoln once said: “To care for him who shall have borne the battle and for his widow, and his orphan,” and those words apply in this instance. Captain Luke was serving his country

to the fullest and his family should be granted the benefits associated with the death of a servicemember.

I am fighting on behalf of Captain Luke and his family and for others in a similarly situated circumstance to clarify that when a person is on orders when they are doing their National Guard training, they are entitled to death benefits wherever they happen to be laying their head at that particular time.

One last word on this. We don't know exactly how much this will cost, but it will not be very much money.

Someone estimated—I do not think it is an official CBO score, but someone estimated it would probably cost \$1 million—that is with an “m”—over 10 years. This is budget dust. This is so small, it is almost laughable, but it is so meaningful to this family and maybe others who in the future will find themselves in this situation.

So I would like to ask my colleagues to consider supporting the Pryor amendment. That is amendment No. 1151. I would love to work with the bill managers to see if we might get it into a managers' package and/or, if we have to, request a rollcall vote.

With that, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHANNES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

REMEMBERING OUR ARMED
FORCES

COLONEL RANDALL L. KOEHLMOOS

Mr. JOHANNES. Mr. President, I rise today to honor a great American military leader from Nebraska, Colonel Randall L. Koehlmoos, U.S. Army.

Colonel Koehlmoos died in Jakarta, Indonesia, where he was the Chief of the Office of Defense Cooperation at our U.S. Embassy.

Officers in the U.S. Army have many roles. We most often recognize those who lead soldiers in combat. Others are assigned to protecting and promoting vital American interests throughout the world. During a notable career, Colonel Koehlmoos served with equal skill and commitment in both roles.

His life of public service began early when a high school art teacher invited him to attend a National Guard drill. Randy was hooked. After joining the Nebraska Army National Guard, he attended the University of Nebraska and earned an officer's commission through the ROTC program. He spent much of his early career with the famed 82nd Airborne Division, where he became a master parachutist with over 100 jumps. He led a platoon during the 1991 gulf war and later a company during NATO operations in Bosnia-Herzegovina.

The diplomatic side of the colonel's career emerged in the 1990s. Not satisfied with what many consider easy assignments in U.S. Embassies, he immersed himself in history, culture, and language. He would become fluent in four foreign languages and attend the Pakistan Army Staff College. A crowning achievement for Colonel Koehlmoos—beyond leading soldiers in combat—was writing a major article about relations between the United States and Pakistan. His article, titled "Positive Perceptions to Sustain the U.S.-Pakistan Relationship," was published in the prestigious Army War College quarterly *Parameters*.

The decorations and badges earned during his distinguished service speak to his dedication and his skill: Defense Superior Service Medal, Bronze Star, NATO Medal, Army Commendation Medal, Armed Forces Expeditionary Medal, Global War on Terrorism, Meritorious Unit Citation, and several foreign nation awards. He was perhaps most proud of having earned the Master Parachutist Badge.

Colonel Koehlmoos was known to be a no-nonsense individual. He was always focused on the mission. But Randy had a soft spot. An unrelenting spiritual love of family dwelled inside this stoic, professional Army officer. His wife Tracey and his sons Robert and Michael and David meant absolutely everything to him. The colonel's larger family extended through his parents Larry and Karen Koehlmoos of Norfolk, Nebraska, to friends and colleagues around the world who revered his strength, compassion and leadership.

Today, I ask that God be with the family of Colonel Randall Koehlmoos. Their faith is strong, and I pray it brings them peace at this very difficult time. And may God bless all those serving in uniform and bless their families.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PAUL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRESERVING CONSTITUTIONAL LIBERTIES

Mr. PAUL. Mr. President, James Madison, the father of the Constitution, warned:

The means of defense against foreign danger historically have become instruments of tyranny at home.

Abraham Lincoln had similar thoughts saying:

America will never be destroyed from the outside. If we falter, and lose our freedoms, it will be because we destroyed ourselves.

During war there has always been a struggle to preserve constitutional liberties. During the Civil War, the right

of habeas corpus was suspended. Newspapers were closed down. Fortunately, these rights were restored after the war. The discussion now to suspend certain rights of due process is especially worrisome given that we are engaged in a war that appears to have no end. Rights given up now cannot be expected to return.

So we do well to contemplate the diminishment of due process knowing that these rights we give up now may never be restored. My well-intentioned colleagues' admonitions in defending provisions of this Defense bill say we should give up certain rights: the right to due process. Their legislation would arm the military with the authority to detain indefinitely, without due process or trial, people suspected of association with terrorism. These would include American citizens apprehended on American soil.

I want to repeat that. We are talking about people who are merely suspected of terrorism or suspected of committing a crime and have been judged by no court. We are talking about American citizens who could be taken from the United States and sent to a camp at Guantanamo Bay and held indefinitely.

This should be alarming to everyone watching this proceeding today because it puts every single American citizen at risk. There is one thing and one thing only that is protecting American citizens, and that is our Constitution, the checks we put on government power. Should we err today and remove some of the most important checks on State power in the name of fighting terrorism, well, then, the terrorists have won.

Detaining citizens without a court trial is not American. In fact, this alarming arbitrary power is reminiscent of what Egypt did with its permanent emergency law. This permanent emergency law allowed them to detain their own citizens without a court trial. Egyptians became so alarmed at that last spring that they overthrew their government.

Recently, Justice Scalia affirmed this idea in his dissent in the Hamdi case saying:

Where the government accuses a citizen of waging war against it, our constitutional tradition has been to prosecute him in Federal court for treason or another crime.

Scalia concluded by saying:

The very core of liberty secured by our Anglo Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive.

Justice Scalia was, as he often does, following the wisdom of our Founding Fathers. As Franklin wisely warned:

Those who give up their liberty for security may wind up with neither.

Really, what security does this indefinite detention of Americans give us? The first and flawed premise, both here and in the badly misnamed PATRIOT Act, is that our pre-9/11 police powers were insufficient to stop terrorism. This is simply not borne out by

the facts. Congress long ago made it a crime to provide or conspire to provide material assistance to al-Qaida or other foreign terrorist organizations.

Material assistance includes virtually anything of value: legal, political advice, education, books, newspapers, lodging, or otherwise. The Supreme Court sustained the constitutionality of this sweeping prohibition. We have laws on the books that can prosecute terrorists before they commit acts of terrorism. Al-Qaida adherents may be detained, prosecuted, and convicted for conspiring to violate the material assistance prohibition. In fact, we have already done this.

Jose Padilla, for instance, was convicted and sentenced to 17 years in prison for conspiring to provide material assistance to al-Qaida. The criminal law does require and can prevent crimes from occurring before they do occur. Indeed, conspiracy laws and prosecutions in civilian courts have been routinely invoked after 9/11 to thwart embryonic international terrorism. In fact, in the Bush administration, Michael Chertoff, then head of the Justice Department's Criminal Division and later Secretary of the Department of Homeland Security, testified shortly after 9/11. He underscored:

The history of this government in prosecuting terrorists in domestic courts has been one of unmitigated success, and one in which the judges have done a superb job of managing the courtroom and not compromising our concerns about security and our concerns about classified information.

We can prosecute terrorists in our courts, and have done so. It is the wonderful thing about our country, that even with the most despicable criminal, murderer, rapist, or terrorist our court systems do work. We can have constitutional liberty and prosecute terrorists. There is no evidence that the criminal justice procedures have frustrated intelligence collection about international terrorism.

Suspected terrorist have repeatedly waived both the right to an attorney and the right to silence. Additionally, Miranda warnings are not required at all when the purpose of the interrogation is public safety. The authors of this bill errantly maintain that the bill would not enlarge the universe of detainees, people held indefinitely. I believe this is simply not the case.

The current authorization for the use of military force confines the universe to persons implicated in 9/11 or who harbored those who were. This new detainee provision will expand the universe to include any person said to be part of or substantially supportive of al-Qaida or the Taliban. But, remember, this is not someone who has been concluded at trial to be part of al-Qaida. This is someone who is suspected.

If someone is a suspect in our country they are usually accorded due process. They go to court. They are not automatically guilty. They are accused of a crime. But now we are saying