attack could cause considerable casualties among nearby populations. Language in the DHS appropriations bill would, for the first time, empower DHS to set performance-based security standards for high-risk chemical facilities. That is approximately 3,400 facilities across this country.

Very importantly, this legislation will allow the Secretary of Homeland Security to shut down a noncompliant plant. I fought very hard for this authority to be included in the appropriations bill. It does no good to empower the Secretary to set these risk-based, performance-based standards but then provide the tools to enforce them.

I recognize there are many chemical plants and chemical companies across this country which have voluntarily taken strong steps to improve their security in the wake of the attacks on our country on 9/11. Unfortunately, the Department of Homeland Security has told us there are many plants which have not improved their security at all or which have taken insufficient measures. We can no longer rely on just voluntary compliance with industry standards.

So this legislation is landmark legislation. It closes a dangerous gap in our homeland security, and it has been included in the Homeland Security appropriations bill.

I would note that the language includes a three-year sunset. The reason for that is we will want to evaluate the effectiveness of this approach, the effectiveness of the regulations, and also consider other measures that were not included in this bill. The committee I am privileged to chair unanimously reported chemical-security legislation that was more comprehensive than the measures included in the appropriations bill. This will give us a chance to evaluate the efforts that have been taken, that will be taken, and then to go back and look at some of the issues that were not included.

I want to be very clear. This is a major step forward. It will help close a dangerous gap in our homeland security, and it is significant progress in eliminating or at least lessening a significant risk to our country.

These are three significant steps forward: the reform of FEMA, the port security bill, and the new authority for DHS to set security measures for chemical facilities. Each of them was made possible because of bipartisan cooperation. At times in this Chamber, we berate ourselves for failing to achieve consensus on legislation that is so important to the American people, but we did it in these three cases—or we are on the verge of doing it—and it is because we did have good cooperation and strong leadership. It was not easy. But the legislation we are passing will advance our ability to protect the American people.

I compliment all of the Members of the Senate, our partners on the House side, as well as members of the administration who have stepped forward and worked so hard to make these reforms a reality. Our success in advancing these achievements in strengthening our homeland security should be a source of justifiable pride to the Members of this body.

Mr. DORGAN. Mr. President, could you describe the circumstances of the Senate? Are we in morning business?

The ACTING PRESIDENT pro tempore. The circumstances are as follows: The Senate is in a period of morning business. The minority holds 15 minutes. The majority has used all of its time.

Mr. DORGAN. So the minority's 15 minutes is now available and ready for use?

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

HABEAS CORPUS

Mr. DORGAN. Mr. President, because the truncated time on the amendments to the underlying bill includes a very short amount of time for the Specter amendment, I am going to use only 5 minutes now to talk about my support of the Specter amendment.

The Specter amendment is about habeas corpus. That is a big term, a kind of complicated term. Let me describe it by describing this picture. This is a young woman. She is a young woman named Mitsuye Endo. Mitsuye Endo looked out from behind barbed-wire fences where she was incarcerated in this country some decades ago during the Second World War. Let me tell you about her. She was a 22-year-old clerical worker in California's Department of Motor Vehicles in Sacramento, CA. She had never been to Japan. She didn't speak Japanese. She had been born and raised in this country. She was a Methodist. She had a brother in the U.S. Army, unquestioned loyalty to the United States of America, but she was incarcerated—picked up, taken from her home, her job, her community, and put behind barbed-wire fences.

Now, she eventually got out of that incarceration, and her plea to the courts was what really led to the unlocking of those camps, and let those tens of thousands of Japanese Americans out of those camps. They had been unjustly viewed as enemies of our country and incarcerated. And with one young woman's writ of habeas corpus, an awful chapter in our country's history soon came to an end. Her question to the courts was a simple but powerful one: Why am I being detained?

What is habeas corpus? Well, it answers the question, by giving access to the courts, of whether you can hold someone indefinitely without charges, without a trial, and without a right for anyone to have a review of their circumstances. When someone has the right to file a habeas corpus petition, it is the right of someone to go to the court system in this country to say to that court system: There has been a mistake. I am innocent; I didn't do it; I shouldn't be here.

The court then asks the question: Why are these people locked up? Should they be locked up? Is there a basis for it? Is it a mistake? Is it wrong?

Everyone in this Chamber will have read the story in the Washington Post about a week ago, and after I read that story, I just hung my head a bit. A Canadian in this country was apprehended at an American airport, at a U.S. airport in New York City. That Canadian citizen, apprehended in New York City by our authorities, was then sent to Syria, where he was tortured for some 8 or 9 months. He was put in a coffin-like structure, a cement coffin-like structure, in isolation, and tortured. It turns out, at the end of nearly a year of his incarceration, it was all a big mistake. He wasn't a terrorist. He wasn't involved with terrorists. But he was apprehended and held incommunicado, in fact, rendered to another country where torture occurred. A big mistake. His wife didn't know where he was. He has a young 2- or 3-year-old child.

What does all this say? Why is this country a country that is different from others? We have been different from others because it is in this country where you can't be picked up off of a street and held indefinitely, held without charges, held without a trial, held without a right to go to a court. It is this country in which that exists.

Let me make another point. Why should we care about how the United States treats noncitizens and taking away the right of habeas corpus for noncitizens? Because every U.S. citizen is a noncitizen in every other country of the world. There are 193 countries in this world. We are citizens of only one. And when an American travels—any American, anywhere—we are noncitizens in those countries.

What would our reaction be? What will our reaction be as Americans if—as an example, recently, a journalist who was detained and arrested and put in jail, I believe in Sudan, who then asked his captors to be able to see the American consulate: I need the ability to contact the American consulate.

His captors said: You have no such rights.

He complained: But I do have that right.

His captors said: No. Those you have detained in the United States are not given those rights, and you are not given those rights, either.

This is why this issue is so important, and that is why I support the Specter amendment. I hope very much the Senate will not make a profound mistake by turning down that amendment.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

MILITARY COMMISSIONS

Mr. DODD. Mr. President, America was attacked on September 11, 2001, by a ruthless enemy of our Nation. It is my strong belief, as I believe it is the belief of all of us in this Chamber, that those who are responsible for orchestrating this plot and anyone else who seeks to do harm to our country and citizens should be brought to the bar of justice and punished severely. On that I presume there is no debate whatsoever.

These are extraordinary times, and we must act in a way that fully safeguards America's national security. That is why I support the concept of military commissions: to protect U.S. intelligence and expedite judicial proceedings vital to military action under the Uniform Code of Military Justice. As we develop such means, we must also ensure our actions are not counterproductive to our overall effort to protect America at all levels.

The administration and the Republican leadership on this issue would have the American people believe—and this is the unfortunate point—that the war on terror requires us to make a choice, both here in this Chamber and across the country, between protecting America from terrorism and the choice of upholding the basic tenets upon which our Nation was founded—but not both. This canard, in my view, has been showcased far too often.

I fully reject that reasoning. Americans throughout the previous 200 years have as well. We can and must balance our responsibilities to bring terrorists to justice while at the same time protecting what it means to be an American. To choose the rule of law over the passion of the moment takes courage, but it is the right thing to do if we are to uphold the values of equal justice and due process that are codified in our Constitution.

Our Founding Fathers established the legal framework of our country on the premise that those in government are not infallible. America's leaders knew this 60 years ago when they determined how to deal with Nazi leaders guilty of horrendous crimes. There were strong and persuasive voices at that time crying out for the summary execution of those men who had commanded with ruthless efficiency the slaughter of 6 million innocent Jews and 5 million other innocent men and women. After World War Two, our country was forced to decide whether the accused criminals deserved trial or execution.

There was an article written recently by Professor Luban, a professor at Georgetown University, titled ''Forget Nuremberg—How Bush's new torture bill eviscerates the promise of Nuremberg.'' I ask unanimous consent that the entire article be printed in the RECORD.

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

FORGET NUREMBERG: HOW BUSH'S NEW TORTURE BILL EVISCERATES THE PROMISE OF NUREMBERG

(By David J. Luban)

The burning question is: What did the Bush administration do to break John McCain when a North Vietnamese prison camp couldn't do it?

Could it have been ''ego up''? I'm told ego up is not possible with a U.S. senator. That probably also rules out ego down. Fear up harsh? McCain doesn't have the reputation of someone who scares easily. False flag? Did he think they were sending him to the vice president's office? No, he already knew he was in the vice president's office. Wait, I think I know the answer: futility—which the Army's old field manual on interrogation defined as explaining rationally to the prisoner why holding out is hopeless. Yes, the explanation must be that the Bush lawyers would have successfully loopholed any law McCain might write, so why bother? Futility might have done the trick.

How else can we explain McCain's surrender this week on the torture issue, one on which he has been as passionate in the past as Lindsey Graham was on secret evidence?

Marty Lederman at Balkinization explains here and here some of the worst bits of the proposed ''compromise legislation'' on detainee treatment. But the fact is, virtually every word of the proposed bill is a capitulation, including ''and'' and ''the.'' And yesterday's draft is even worse than last week's. It unexpectedly broadens the already broad definition of ''unlawful enemy combatant'' to include those who fight against the United States as well as those who give them ''material support''—a legal term that appears to include anyone who has ever provided lodging or given a cell phone to a Taliban foot soldier out of sympathy with his cause. Now, not only the foot soldier but also his mom can be detained indefinitely at Guantanamo.

But the real tragedy of the so-called compromise is what it does to the legacy of Nuremberg—a legacy we would have been celebrating next week at the 60th anniversary of the judgment.

What does the bill do to Nuremberg? Section 8(a)(2) holds that when it comes to applying the War Crimes Act, ''No foreign or international sources of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection 2441(d).'' That means the customary international law of war is henceforth expelled from U.S. war-crime law—ironic, to say the least, because it was the U.S. Army's Lieber Code that formed the basis for the Law of Armed Conflict and that launched the entire worldwide enterprise of codifying genuinely international humanitarian law.

Ironic also because our own military takes customary LOAC as its guide and uses it to train officers and interrogators. Apparently there is no need to do that anymore, at least when it comes to war crimes. That means goodbye, International Committee of the Red Cross; the Swiss can go back to their fondue and cuckoo clocks. It also means goodbye, jurisprudence of the Yugoslav tribunal, which the United States was instrumental in forming.

And also goodbye, Nuremberg.

Sept. 30 and Oct. 1 mark the 60th anniversary of the tribunal's judgment. If the opening chapters of Telford Taylor's superb The Anatomy of the Nuremberg Trials make one thing crystal clear, it's the burning desire of the United States to create international law using those trials. Great Britain initially opposed the Nuremberg trials and urged simply shooting top Nazis, out of fear they would use the trials for propaganda. Stalin favored conducting trials, but only to establish punishments, not guilt. Like Great Britain, he thought punishing the top Nazis should be a political, and not a legal, decision. The trials happened as they did only because the United States insisted on them for purposes of establishing future law—a task that summary justice at executive sayso could never have done.

At the London conference that wrote the Nuremberg Charter, France and Russia both objected to criminalizing aggressive war for anybody but the Axis countries. But Supreme Court Justice Robert Jackson, the American representative, insisted that creating universally binding international law was the prime purpose of the tribunal.

A compromise left the international status of Nuremberg law ambiguous—the tribunal's jurisdiction covered only the Axis countries, but nowhere does the charter suggest that the crimes it was trying were only crimes if committed by the Axis powers. Because of this ambiguity, the status of the Nuremberg principles as international law was not established until 1950, when the U.N. General Assembly proclaimed seven Nuremberg Principles to be international law. The American agenda had finally prevailed.

Well, forget all that as well. The Nuremberg Principles, like the entire body of international humanitarian law, will now have no purchase in the war-crimes law of the United States. Who cares whether they were our idea in the first place? Principle VI of the Nuremberg seven defines war crimes as ''violations of the laws or customs of war, which include, but are not limited to . . . ill-treatment of prisoners of war.'' Forget ''customs of war''—that sounds like customary international law, which has no place in our courts anymore. Forget ''ill-treatment''—it's too vague. Take this one: Principle II, ''The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.'' Section 8(a)(2) sneers at responsibility under international law. Or Principle IV: ''The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law , provided a moral choice was in fact possible to him.'' Moral, shmoral. The question is, do you want the program or don't you?

The Nuremberg trials presupposed something about the human conscience: that moral choice doesn't take its cues solely from narrow legalisms and technicalities. The new detainee bill takes precisely the opposite stance: Technicality now triumphs over conscience, and even over common sense. The bill introduces the possibility for a new cottage industry: the jurisprudence of pain. It systematically distinguishes ''severe pain''—the hallmark of torture—from (mere) ''serious'' pain—the hallmark of cruel and degrading treatment, usually thought to denote mistreatment short of torture. But then it defines serious physical pain as ''bodily injury that involves . . . extreme physical pain.'' To untutored ears, ''extreme'' sounds very similar to ''severe''; indeed, it sounds even worse than ''severe.'' But in any case, it certainly sounds worse than ''serious.'' Administration lawyers can have a field day rating painful interrogation tactics on the Three Adjective Scale, leaving the rest of us to shake our heads at the essential lunacy of the enterprise.

And then there is section 8(3), which says that ''the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions.'' Section (B) makes it clear that his interpretation ''shall be authoritative (as to non-grave breach provisions).''