

marriage was in jeopardy when it came to the courts. It goes back to a decision made by the U.S. Supreme Court in a case called *Lawrence v. Texas*. This was a case that struck down the anti-sodomy provisions of Texas law. The most remarkable thing about that decision is not the result, it was how the Court got to that result. Indeed, as many predicted, the Court overruled the decision in *Bowers v. Hardwick*, which upheld the anti-sodomy law of Georgia years ago. But in this case, the Court not only struck it down on an equal protection basis—Justice Kennedy, writing for the Court, created a new constitutional right: To be free in one's intimate sexual and personal relationships, such that he held the Constitution now prohibited any sort of restriction by legislation or by official policy on those intimate relationships between adults.

Indeed it was predicted at that time, I believe it was Justice Scalia in dissent, who said this was the first step toward a ban on traditional marriage. *Lawrence v. Texas* was a Federal constitutional decision that was one of the bases upon which the Massachusetts Supreme Court interpreted its State constitution to require same-sex marriage in that State, a rather ominous succession of events. It is an ominous situation for those of us who support traditional marriage and believe it is important to our society and to our children.

Now, there are those who want to say this debate that has ensued over same-sex marriage is designed to be hurtful or harmful to those who might take advantage of the opportunity to marry same-sex couples. I want to make clear that is not true. I believe that Americans instinctively believe in two fundamental propositions: First, we believe in the essential worth and dignity of every human being. Yet at the same time, we also believe in the importance of traditional marriage.

It is no accident that it was not until 224 years after the Massachusetts Constitution was written and ratified, in 1780, that an activist supreme court mandated same-sex marriage in Massachusetts, contrary to the wishes and the will of the people of that State. As I say, now this is not just a local issue, nor a State issue; indeed, this is a Federal issue, requiring a Federal national response.

So in all sincerity, I reiterate that those of us who argue in favor of a remedy to ensure the protection of traditional marriage do not do that with an intent to disparage anyone personally. But we do believe that traditional marriage is a positive good for our society, as the most stabilizing and positive influence on family life in this country, as well as being in the best interests of children.

The fundamental question we are going to have to address, sooner or later, is who will define marriage in the United States? Will it be the American people, or will it be activist judges

who are reading a newly found right into a Constitution that for the last 200 or more years has not included that right, or at least it was a right that went undiscovered by activist judges prior to this time? Put another way, the question is, are the deeply held convictions of the American people when it comes to the importance of traditional marriage irrelevant?

I suggest to you the answer is no—unless, of course, we are giving up, after all this time, on what Lincoln called “government of the people, by the people, and for the people.”

So the question is, what do we do? What do the overwhelming majority of the people in the United States of America do, those who believe in the fundamental importance of traditional marriage for the stability of families and for the best interests of our children? What are we to do to respond?

Well, the majority of States have responded but I would suggest to you in a way that does not protect them anymore when it comes to the definition of traditional marriage. And that is, a majority of the States, back in the middle of the 1990s, passed what are called defense of marriage acts, which defined marriage as exclusively an institution between one man and one woman.

Congress itself, as a matter of Federal policy, passed the Federal Defense of Marriage Act in 1996. Overwhelming bipartisan majorities in the House and the Senate voted to pass the Defense of Marriage Act. But it is that very statute, that very law, that very expression of the national will that has now been challenged most recently in a Florida Federal district court, claiming that the Federal Defense of Marriage Act violates the U.S. Constitution as interpreted by the U.S. Supreme Court in *Lawrence v. Texas*.

The only response I know of, to judges who are basically making the law up as they go along, or trying to write their own personal or social agenda into the Constitution and to deny the American people the fundamental right of self-government, is a constitutional amendment. I know—and we all know—the American people have been historically reluctant to amend our Constitution. In fact, it has only happened 27 times in our history. But it is important to recognize, at the same time, that there is written into that very same Constitution a mechanism, under article V, which allows two-thirds of the U.S. Congress to vote on an amendment, which is then ratified by three-quarters of the States. This allows the American people to retain their fundamental right to determine what kind of nation America is and what kind of nation it will become, even against a judiciary run amok.

There are those I respect a great deal in this body and elsewhere who would suggest that the Constitution is sacrosanct. Indeed, we put our hand on the Bible and we pledged to uphold the Constitution and laws of the United

States when we were sworn into this body. But I submit that we take an oath to the whole Constitution, not just part of it, including article V, which provides a procedure for amendment so that the Constitution can continue to reflect the will of the American people.

I suggest to you that the Constitution is not a holy covenant to be interpreted or amended by nine high priests on the U.S. Supreme Court. These judges do not have the exclusive rights to the Constitution. We, the American people, do. And sometimes—and this may very well be one of those times—it may be necessary for the American people to reclaim their right to determine what kind of nation we are and what kind of nation we will become, particularly when it comes to an issue as fundamental as traditional marriage. If, out of ignorance or apathy, we sacrifice our right to self-government, we have allowed the very nature of our Nation to be altered, and that would be very tragic indeed.

So I say in conclusion: this is a very serious matter. It ought to be discussed rationally and seriously in a dignified and civil manner, with enmity toward none, but with a desire on the part of the American people, who believe in the importance of traditional marriage and its benefit to our society—we ought not to be afraid to stand up and say so. Nor should we be deterred by those who might be less civil, be less dignified and less temperate in their remarks. Indeed, we know that can occur.

But it is my hope that as we go forward, and particularly as we mark this watershed event in America's history on Monday, May 17, with the issuance of marriage licenses to same-sex couples in Massachusetts by virtue of court edict and not a vote of the people. This is a matter that will not go away, and ultimately the American people will insist that we deal with it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first, I commend the Senator from Texas for a fine statement. I note that his coming to the Senate and joining the Judiciary Committee has been a tremendous asset for that committee. His leadership of the subcommittee which he chairs and the serious and complete way in which he addresses issues has really helped us to tackle some of these very difficult issues. I appreciate his leadership very much.

Mr. President, I ask unanimous consent to speak for 20 minutes in morning business.

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

#### PRISONER ABUSE IN IRAQ

Mr. KYL. Mr. President, I want to talk about the prisoner abuse in Iraq and how it ties into the conduct of our war there to ensure that we can prevail

in this struggle in which we have engaged. I want to begin by talking about a New York Times newspaper article this morning which I think puts into better perspective the nature of the offense that has been committed in that prison and then move to a discussion of how our troops are trained to conduct investigations at a military installation in Arizona, my State, and conclude with remarks that were offered this morning in an op-ed piece by Charles Krauthammer that I think puts all of this into a perspective that we would do well to pay some attention to.

Let's begin with the last 10 or 12 days of discussion about what occurred in the prison in Iraq and how that has affected public opinion about the morality of our effort there. There has been a lot of speculation. I have urged colleagues and others to avoid speculating until the reports are in, until the facts are before us, because speculation cannot only lead to wrong conclusions, it can actually damage our position around the world.

Some seem all too anxious to prove that what happened there had to be the result of orders from higher-ups, that it just couldn't possibly have been the actions of a few soldiers acting in a very wrong way; it had to come from higher-ups.

It is possible there were some orders from higher-ups that had an effect, but sometimes there seems to be almost a desire, a hope that we will find it was the orders from somebody higher up, and the political implications of that are obvious.

I have seen speculation that because families and friends of some of these soldiers, understandably, were in disbelief that their friend or child could have done this without being ordered to do so, that, therefore, is proof the order had to come from above.

It is not proof. The defense is understandable. It may or may not be true. But what is becoming a little bit more clear is that, despite the number of photographs, these incidents appear to have been isolated, to have occurred on few occasions in one place by a very few people without having been ordered from above.

This is the point of a New York Times article of today, "U.S. Soldier Paints Scene of Eager Mayhem" at Iraqi prison. It is the story of the statement given to investigators by SPC Jeremy C. Sivits who is under court-martial. The statement was released by a lawyer for another soldier. That is how the New York Times acquired it.

The sense of the story is that Specialist Sivits described a scene of misconduct by a few of his colleagues:

... not authorized by anyone in the chain of command and with no connection to any interrogations.

Of course, we have seen a lot of speculation that it must have been ordered, it must have been in connection with softening up the prisoners. The first

clear word of what happened by someone who was willing to talk to investigators and admit his own culpability in the process suggests that is not true. Let me continue to quote:

The soldiers knew that what they had done was wrong. Specialist Sivits told investigators, at least enough to instruct him not to tell anyone what he had seen. Specialist Sivits was asked if the abuse would have happened if someone in the chain of command was present. "Hell no," he replied, adding: "Because our command would have slammed us. They believe in doing the right thing. If they saw what was going on, there would be hell to pay.

The story goes on to note that this activity occurred at least in his presence apparently only on two occasions, most of it on one particular evening, and that at one point a sergeant heard the commotion and looked down to see what was going on and yelled at them in anger to knock it off. The story obviously concludes that this is, according to this specialist, a case of bad behavior by a few people who obviously had inadequate supervision but who were not doing this to soften up prisoners or doing it at the command of anyone. And, indeed, they knew if their commanders found out there would be "hell to pay."

This is important because if it is true, what it demonstrates is that what we have been saying all along is right. America does not conduct its interrogations this way. It does not contain and handle prisoners this way. This conduct was an aberration. It will not be tolerated. The guilty will be forced to pay, and we will try to understand what is necessary to implement to see that it doesn't happen again.

Secondly, if in fact this is correct, as the New York Times has reported, it is not just these people who will pay but their immediate superiors who allowed them to conduct this activity. Because even though those superiors may not have known about it or certainly participated in it, they created the circumstance under which this could occur. They bear some responsibility as well.

What about the interrogation techniques? There has been a lot of speculation about that. First, the official U.S. Government policy, the official Defense Department policy, is that the laws of the Geneva Conventions will apply in Iraq, period. There is no exception for really bad guys. There is no exception in order to extract information. Some confusion exists because of the fact that the Geneva Conventions don't apply to a group such as al-Qaida. That is a fact. It is not something subjective.

The reason is because by the very terms of the Geneva Conventions, they apply in cases where countries have signed the conventions, and they apply to situations in which you have an army, a military force that wears uniforms, that does not conduct activities against civilians. In the case of the al-Qaida, none of those conditions applies. Technically the laws of the Geneva

Conventions do not apply to al-Qaida. That is a true statement. Because people have made that point, there has been then a leap to the conclusion that, therefore, the U.S. Government is mistreating al-Qaida. But that is not true.

Our policy is that notwithstanding the fact the Geneva Conventions don't apply to al-Qaida detainees, the humane treatment called for in the Geneva Conventions will still be the rule, the law, the order of the day for our handling of those prisoners so that the same kind of treatment that is required by the Geneva Conventions will even be applied to people who are not technically entitled to the protection. That is our official U.S. policy.

It is trained at Fort Huachuca, an Army base in southern Arizona, which has a mission, among other things, to train interrogation and collection of intelligence.

Let me read a couple of items from an article from the Tucson Citizen of May 13.

I ask unanimous consent to print in the RECORD a May 14 article from the New York Times, a May 13 article from the Tucson Citizen, and an article to which I will refer, an op-ed piece by Charles Krauthammer, dated May 14, from the Washington Post.

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

[From The New York Times, May 14, 2004]

U.S. SOLDIER PAINTS A SCENE OF EAGER  
MAYHEM AT IRAQI PRISON

(By Kate Zernike)

When a fresh crop of detainees arrived at Abu Ghraib prison one night in late October, their jailers set upon them.

The soldiers pulled seven Iraqi detainees from their cells, "tossed them in the middle of the floor" and then one soldier ran across the room and lunged into the pile of detainees, according to sworn statements given to investigators by one of the soldiers now charged with abuse. He did it again, jumping into the group like it was a pile of autumn leaves, and another soldier called for others to join in. The detainees were ordered to strip and masturbate, their heads covered with plastic sandbags. One soldier stomped on their fingers and toes.

"Graner put the detainee's head into a cradle position with Graner's arm, and Graner punched the detainee with a lot of force, in the temple," Specialist Jeremy C. Sivits said in his statements to investigators, referring to another soldier charged, Specialist Charles A. Graner Jr. "Graner punched the detainee with a closed fist so hard in the temple that it knocked the detainee unconscious."

"He was joking, laughing," Specialist Sivits said. "Like he was enjoying it."

"He went over to the pile of detainees that were still clothed and he put his knees on them and had his picture taken," Specialist Sivits said. "I took this photo."

Specialist Sivits's two statements, given to investigators in January and released by a lawyer for another soldier on Thursday, recount the evening's activities in graphic but unemotional language, portraying a night of gratuitous and random violence. Lawyers for the soldiers have explained the abuse captured in hundreds of photographs now at the center of the Abu Ghraib scandal by saying

the soldiers were operating on the orders of military intelligence in an effort to get detainees to talk.

Last night, lawyers for the other charged soldiers repeated that. They said that in a bid for leniency, Specialist Sivits, 24, the first to be court-martialed, is expected to plead guilty on Wednesday and testify against the others.

But Specialist Sivits described a scene of twisted joviality not authorized by anyone in the chain of command and with no connection to any interrogations.

"She was laughing at the different stuff they were having the detainees do," Specialist Sivits said, describing Pfc. Lyndie R. England, another soldier charged.

The soldiers knew that what they had done was wrong, Specialist Sivits told investigators, at least enough to instruct him not to tell anyone what he had seen. Specialist Sivits was asked if the abuse would have happened if someone in the chain of command was present. "Hell no," he replied, adding: "Because our command would have slammed us. They believe in doing the right thing. If they saw what was going on, there would be hell to pay."

The evening began with Staff Sgt. Ivan L. Frederick II casually telling Specialist Sivits to join him where the detainees were held. They escorted the detainees from their holding cells and piled them up. "Graner told Specialist Wisdom to come in and 'get him some.' Meaning to come in and be part of whatever was going to happen."

Specialist Sivits told investigators, referring to Specialist Matthew Wisdom.

"A couple of the detainees kind of made an ahh sound as if this hurt them or caused them some type of pain when Davis would land on them," he said. Sergeant Javal C. Davis responded by stepping on their fingers or toes, Specialist Sivits said, and the detainees screamed.

The platoon sergeant standing on a tier above the room heard the screams and yelled down at Sergeant Davis to stop, surprising the other soldiers with the anger in his command, Specialist Sivits said. But within two minutes, the platoon sergeant left, and the soldiers resumed the abuse.

"Next Graner and Frederick had the detainees strip," Specialist Sivits said. "Graner was the one who told them to strip in Arabic language." The detainees hesitated. Specialist Graner and Sergeant Frederick took them aside and instructed them again. Specialist Graner told them to sit.

"I do not know what provoked Graner," Specialist Sivits said, "but Graner knelt down to one of the detainees that was nude and had the sandbag over his head" and punched the detainee unconscious.

"I walked over to see if the detainee was still alive," Specialist Sivits said. "I could tell the detainee was unconscious, because his eyes were closed and he was not moving, but I could see his chest rise and fall, so I knew he was still alive."

Specialist Graner said little. He had wounded his hand. "Damn, that hurt," Specialist Sivits quoted him as saying. After about two minutes, Specialist Sivits said, the detainee moved, "like he was coming to." Specialist Graner walked over to pose with the pile of detainees.

Sergeant Frederick was standing in front of another detainee. "For no reason, Frederick punched the detainee in the chest," Specialist Sivits said. "The detainee took a real deep breath and kind of squatted down. The detainee said he could not breathe. They called for a medic to come down, to try and get the detainee to breathe right. Frederick said he thought he put the detainee in cardiac arrest."

Specialist Graner, meanwhile, was having the other detainees make a tower, all of

them in a kneeling position like a formation of cheerleaders.

"Frederick and Graner then tried to get several of the inmates to masturbate themselves," Specialist Sivits recounted.

"Staff Sergeant Frederick would take the hand of the detainee and put it on the detainee's penis, and make the detainee's hand go back and forth, as if masturbating. He did this to about three of the detainees before one of them did it right."

After five minutes, they told him to stop. Specialist Graner then had them pose against the wall, and made one kneel in front of the other, Specialist Sivits said. "So that from behind the detainee that was kneeling, it would look like the detainee kneeling had the penis of the detainee standing in his mouth, but he did not."

Specialist Sabrina Harman and Private England "would stand in front of the detainees and England and Harman would put their thumbs up and have the pictures taken."

Asked why the event took place, Specialist Sivits replied: "I do not know. I do not know if someone had a bad day or not. It was a normal day for me, aside from the stuff I told you about."

Asked to describe Sergeant Frederick's attitude, he replied, "Same as ever, mellow." Specialist Harman, he said, looked somewhat disgusted, but laughed, too, and so did Specialist Sivits, in his own account.

"What part did you think then was funny?" investigators asked. He replied, "the tower thing."

The evening was not an isolated case of violence, Specialist Sivits said. He described another night when a dog was set upon a detainee, and another when a detainee was handcuffed to a bed.

"Graner was in the room with him," he said. "This detainee had wounds on his legs from where he had been shot with the buckshot." Specialist Graner, he said, would "strike the detainee with a half baseball swing, and hit the wounds of the detainee. There is no doubt that this hurt the detainee because he would scream he got hit. The detainee would beg Graner to stop by saying 'Mister, Mister, please stop,' or words to that effect."

"I think at one time Graner said in a baby type voice, 'Ah, does that hurt?'" Specialist Sivits added.

Guy L. Womack, a lawyer for Specialist Graner, said he had not seen the statement from Specialist Sivits but doubted that his client would have hit a detainee.

"I don't think he was that kind of guy," Mr. Womack said. "He would have done it if he was ordered to do it." He said that military intelligence soldiers were in one of the graphic photographs, indicating that they were aware of what was going on.

"Sivits, as you know, has entered a plea agreement with the government, getting lenient treatment for testifying against other people," Mr. Womack said, "and by definition if he doesn't say something negative about other people he would not get his deal."

Similarly, a lawyer for Sergeant Frederick dismissed the statement. "Sivits is a roll-over guilty plea, and that may provide comfort to some," said the lawyer, Gary Myers. "But it has no impact upon the defense of any other case because it has nothing whatsoever to do with the guilt or innocence of my client."

Specialist Sivits's lawyer has not responded to requests for comments.

As for Specialist Sivits, investigators asked him in his statements whether he thought any of the incidents were wrong. "All of them were," he replied.

Why did he not report the incidents? He replied: "I was asked not to, and I try to be

friends with everyone. I see now where trying to be friends with everyone can cost you."

"I was in the wrong when the above incidents happened," he said. "I should have said something."

[From the Tucson Citizen, Thursday, May 13, 2004]

ABUSE DISGUSTS FORT'S INTERROGATORS  
TRAINEES TAUGHT RIGHT WAY TO MAKE SUBJECTS TALK; STUDENTS LEARN HOW TO PLAY ON FEARS WITHOUT VIOLENCE

(By C.T. Revere)

The abuse of Iraqi detainees at Abu Ghraib prison violated all training standards for Army interrogators and has commanders and students at Fort Huachuca angry and fearful of potential repercussions.

"It's anathema. It's not what we train. It's not our values," said Maj. Gen. James Marks, commanding general of the U.S. Army Intelligence Center. "I can't fathom who would do that . . . I'm disgusted by it. Those aren't interrogation techniques. That's a bunch of rogue soldiers conducting evil acts."

Many at Fort Huachuca, home of the 111th Military Intelligence Brigade, which includes the training programs for interrogators and counterintelligence agents, say the actions of a few soldiers at Abu Ghraib have cast a pall on the Army's intelligence-gathering community.

"Here we are, training hard and preparing ourselves, when something like that happens," said Pfc. Ryan Johnson, 30, who will complete Human Intelligence Collector training in less than two weeks. "It's a few individuals who have taken it upon themselves to act outside of what they've been trained to do. It reflects on the rest of us that are training to do the right thing. I was disgusted with the way they conducted themselves."

In response to the abuse, officials at Fort Huachuca opened their classrooms and training grounds to news media yesterday to show how the ever-growing population of interrogators is trained.

"We do not authorize any form of hands-on in terms of our use of interrogation techniques," Marks said. "We try to play on their existing fears, but it is not allowed to put hands on during an interrogation. The only time you put hands on is when you are physically moving them from one place to another."

Methods such as sleep deprivation, forcing detainees to stand in one position for prolonged periods and physical assaults of any kind are not part of the curriculum at Fort Huachuca, Marks said.

"We train soldiers to do what's right. Our Army is values-based," he said.

Soldiers training to become interrogators complete an intensive course that runs for 16 weeks and four days and teaches 14 methods for interrogating "in accordance with the Geneva Conventions," said Joel Krasnosky, a retired Army interrogator who is the chief of the Human Intelligence Collector Course.

The first approach is to ask direct questions intended to glean the information being sought, he said.

If that fails, interrogators can offer incentives for information, appeal to emotions such as love of country or hate for groups or ideas, intensifying or reducing fear, appealing to pride or ego or convincing the person under interrogation that there is simply no point to resisting.

Another approach calls for giving the impression that the interrogators know more than he or she does, sometimes by using a "prop" dossier or file. Another tactic is to insist the source has been identified as someone else they'd rather not be.

Repeating the same question over and over can break down a source, as can constantly interrupting the person or simply sitting silently and waiting them out.

Once any of the approaches gets a source talking, interrogators go back to direct questioning to get the information they want, said Master Sgt. Steven Bohn, senior enlisted instructor and a veteran interrogator.

"Ninety-nine percent of the time that is the most effective approach," Bohn said. "You've got to get that information. You beat around the bush all day long. That's what we do. But then you've always got to go back to the direct approach."

All interrogations take place with a security guard present, typically a member of the military police, Marks said. Oftentimes, a contract interpreter is also present, but he or she never participates in the questioning, he said.

"They are a device through which an interrogator can get to the person he is interrogating. We're not necessarily as good as the guy we're trying to interrogate. We admit that," he said.

Adherence to the military doctrine known as "The Law of War" prevents soldiers from crossing the line even in trying circumstances, Marks said.

"The training has got to step in so that the soldier doesn't even put his finger on the line," he said. "It's not just physical courage. It's moral courage."

Better examples of military training are the two noncommissioned officers, both trained at Fort Huachuca, who developed the intelligence that led to the capture of Saddam Hussein, Marks said.

While physical abuse and deprivation are not part of the training for interrogators, they must take measures to obtain information that is intended to save lives, he said.

"I want them to be tired. I want them to be afraid of me," he said. "When they breathe, I want them to think the interrogator gave them the right to expand their lungs. When the interrogator enters that room, I want him to think, 'Oh, my God. What's going to happen next?' And I haven't touched him."

[From the Washington Post, May 14, 2004]

#### THE ABU GHRAIB PANIC

(By Charles Krauthammer)

Democrats calling for Donald Rumsfeld's resignation invoke the principle of ministerial responsibility: a Cabinet secretary must take ultimate responsibility for what happens on his watch. Interesting idea. Where was it in 1993 when the attorney general of the United States ordered the attack on the Branch Davidian compound in Waco, which ended in the deaths of 76 people?

Janet Reno went to Capitol Hill and said, "It was my decision, and I take responsibility." This was met with approving swoons and applause. Was she made to resign? No. And remember: This was over an action that did not just happen on her watch but that she ordered—an action that resulted in the deaths of, among others, more than 20 children.

Given the fact that when they were in power Democrats had little use for the notion of ministerial responsibility, their sudden discovery of it over Abu Ghraib suggests that this has little to do with principle.

This is, of course, about politics. And for the administration, the politics are simple: Cabinet members are there to serve the president, and if they become a political liability, they should fall on their sword for the greater good of the administration.

If that were the case here, I am sure that Rumsfeld, who does not need this or any job,

would resign. He should not. Throwing Rumsfeld to the baying hounds would only increase their appetite.

Remember that when the scandal broke, there was lots of murmuring among the chattering classes about the inadequacy of the president's initial response because, for all his remorseful groveling on al-Hurra and al-Arabiya, he had not invoked the magic phrase: I'm sorry. So what happened when, shortly after, in the presence of King Abdullah of Jordan, he explicitly apologized? "They've Apologized. Now What?" (headline, New York Times, the very next Sunday.)

In the Rumsfeld case, the "Now What?" is obvious. Democrats will pocket the resignation, call it an admission of not just ministerial responsibility but material responsibility at the highest levels of the administration, and use that to further attack the president.

In any case, the whole Rumsfeld debate is a sideshow. For partisans it is a convenient way to get at the president. And for those who have no partisan agenda but are shocked by the Abu Ghraib pictures, it is a way to try to do something, anything, to deal with the moral panic that has set in about the whole Iraq enterprise.

This panic is everywhere and now includes many who have been longtime supporters of the war. The panic is unseemly. The pictures are shocking and the practices appalling. But how do the actions of a few depraved soldier among 135,000 negate the moral purpose of the entire enterprise—which has not only liberated 25 million people from 25 years of genocidal dictatorship but has included a nationwide reconstruction punctuated by hundreds, thousands, of individual acts of beneficence and kindness by American soldiers?

We are obsessing about the wrong question. It is not: Is our purpose in Iraq morally sound? Of course it is. The question today, as from the beginning, remains: Is that purpose achievable?

Doability does not hinge on the pictures from Abu Ghraib. It hinges on what happens on the ground with the insurgencies. The greater general uprising that last month's panic-mongers had predicted has not occurred. The Sadr insurgency appears to be waning. Senior Shiite clerics, local leaders and demonstrators in the streets of Najaf have told Moqtada Sadr to get out of town. Meanwhile, his militia is being systematically taken down by the U.S. military.

As for Fallujah, we have decided that trying to fully eradicate Sunni resistance is too costly in U.S. lives. Moreover, this ultimately is not our job but one for the 85 percent of Iraqis who are not Sunni Arabs—the Shiites and Kurds who will inherit the new Iraq. We have thus chosen an interim arrangement of local self-rule in the Sunni hotbeds. And if that gets us through the transition of power to moderate Iraqis, fine.

This seems entirely lost on the many politicians and commentators who have simply lost their bearings in the Abu Ghraib panic. The prize in Iraq is not praise for America from the Arab street nor goodwill from al-Jazeera. We did not have these before Abu Ghraib. We will not have these after Abu Ghraib. The prize is a decent, representative, democratizing Iraq that abandons the pan-Arab fantasies and cruelties of Saddam Hussein's regime.

That remains doable. What will make it undoable is the panic at home.

Mr. KYL. The Tucson Citizen's article in part reads as follows:

The abuse of Iraqi detainees at Abu Ghraib prison violated all training standards for Army interrogators and has commanders and students at Fort Huachuca angry and fearful of potential repercussions. "It's anathema.

It's not what we train. It's not our values," said Maj. Gen. James Marks, commanding general of the U.S. Army Intelligence Center. "I can't fathom who would do that \* \* \* I'm disgusted by it. Those aren't interrogation techniques. That's a bunch of rogue soldiers conducting evil acts."

Just a couple other sentences from the article:

Many at Fort Huachuca, home of the 111th Military Intelligence Brigade which includes the training programs for interrogators and counterintelligence agents, say the actions of a few soldiers at Abu Ghraib have cast a pall on the Army's intelligence-gathering community.

It goes on to note that "it reflects on the rest of us that are training to do the right thing." And just one other quotation from General Marks:

We do not authorize any form of hands-on in terms of use of our interrogation techniques.

The article goes on to talk about precisely what kind of interrogation is permitted, what the techniques are to get information. But it makes it very clear none of the things that have been depicted in these photographs are even remotely authorized.

So it actually ties in with the article from the New York Times that this could not have been done by military intelligence to gather information from these prisoners. That is an important point because some have begun to question the morality of our involvement in Iraq and the mission which so many of our young soldiers have put their lives on the line to achieve, and now several hundred have died to achieve.

One of our colleagues made the point this prison had done horrible things under the regime of Saddam Hussein, and now it was open under new management, namely the U.S. Government.

I find that statement to be deplorable because it suggests a moral equivalency between what the U.S. stands for and has done and what Saddam Hussein has done in that same prison. We have heard about and seen some evidence, and I believe there will be additional evidence coming out that reveals what Saddam Hussein did to people in that prison—the torture, the rape, the murder—absolutely despicable actions that have absolutely no comparative value to what occurred—if on more than a couple of occasions—by a handful of American soldiers who did wrong and who will be punished for doing wrong.

The difference between our morality and the morality of Saddam Hussein is it was his intention to inflict this kind of despicable horror, and the magnitude of it was horrific, whereas in the United States, we stand for exactly the opposite. We will punish those who conducted this kind of activity and we will make it clear that is not our standard. Again, the moral equivalency is so utterly lacking it is amazing to me anybody would even try to make that connection. This is especially sad in the week in which Nick Berg's death was brought home to us in such a

graphic way by the same kind of terrorists who held sway in Iraq under Saddam Hussein.

This is the kind of enemy we are fighting. It requires us to take stock about what we need to do as policymakers in discussing this publicly, because the message we send to the world, to terrorists, and to the Iraqis in particular, is going to play a large role in how people view our effort and, therefore, whether it can succeed in the long run.

If our leaders are criticizing our effort as an immoral effort, as nothing more than a continuation of what Saddam Hussein was doing, then it is doubtful our effort can succeed. Americans must stand up for what is right in this country and what they know our country to be, and we must make it crystal clear to the rest of the world we have a moral purpose, that we do have a commitment to the rule of law, and anything that goes outside of that rule of law will be dealt with appropriately. That is the difference between our society and the society we replaced in Iraq.

That is very critical for us to discuss and to not have our leaders undercutting us and, therefore, calling into question the legitimacy not only of the mission but of the activities of our soldiers and others fighting this war.

The third article I would like to discuss is an op-ed, actually, entitled "The Abu Ghraib Panic," May 14, Washington Post, by Charles Krauthammer. As usual, it takes a person such as Charles Krauthammer to put this into perspective. He always comes to the rescue when policymakers and pundits and others begin to fly off on tangents that miss the point, that begin to take us down the wrong path in terms of a logical analysis of what is going on. He tends to bring us back to the central point we need to consider and discuss and the policy that needs to be carried out.

His op-ed today brings us back to the central point by beginning with the discussion of those who have called for the resignation of the Secretary of Defense. He points out this exercise is what he calls "ministerial responsibility"—the notion that, in some parliamentary governments, if something goes wrong down below, the leader of that particular department resigns, or offers his resignation, in order to demonstrate the responsibility of the government. He points out that is not a doctrine that has held in the United States, where there is no responsibility of the individual involved.

Indeed, he points out even when there is responsibility for the individual—the higher up individual—and that individual takes responsibility, it has not been the case in this country to call for the resignation of the individual.

The example he gives is the one of former Attorney General of the United States Janet Reno, who not only was on duty when the Branch Davidian

compound in Waco was attacked by American forces in 1993 but ended in the deaths of 76 people. She not only was on duty, but she ordered the attack, which resulted in, among other things, the death of 20 children. That was an awful event. She took responsibility for it. She said, "It was my decision and I take responsibility." There was much applause for her willingness to do that. But she didn't resign. She was not asked to resign. She was not fired by the President, notwithstanding her direct responsibility for what had occurred.

Compare that to the case today with Secretary Rumsfeld, who, by all accounts, has done a tremendous job at the Department of Defense. He has successfully executed two wars. He is trying to transform our military. He is now involved in an effort to ensure the security of Iraq so power can be turned over on June 30; and a handful of soldiers, at a very low level, in a prison in Iraq commit crimes against prisoners somehow becomes his direct responsibility, such that he has to actually resign from his position in order, somehow, to demonstrate the morality of our position there.

He doesn't have to do that because it was not his responsibility. He was responsible for saying the laws of the Geneva Conventions apply. He was trying to make sure everybody under his command was doing their duty. In no way will it ever come to pass that responsibility, in terms of culpability for this action, went very far up the chain. As a result, it is more a frustration that some people don't know anything else to do that they call for his resignation. Of course, there is a political component, too. The President's enemies use this as a way to get at him. One can expect that in a political environment. But it has severe consequences when people around the rest of the world begin to think this is the opinion not only of key policymakers in America but represents a policy that should be carried out by our Government and, if it is not, somehow our Government is very wrong. So there are consequences of the people who discuss this in that light.

As Charles Krauthammer points out, that has never been the standard in the U.S. If you look to the case of Janet Reno, where there really was culpability, and yet she wasn't fired, or she did not resign, you can see this could be, in the case of many people, a political exercise rather than an exercise in responsible criticism.

The point Krauthammer tried to make here is this whole business about Secretary Rumsfeld is a sideshow, in any event, and that what is happening is some Americans who are not adequately grounded in what this country is all about, what the war is about, are beginning to panic. Let me quote something and then wonder aloud. He says:

The panic is unseemly. The pictures are shocking and the practices appalling. But how do the actions of a few depraved soldiers

among 135,000 negate the moral purpose of the entire enterprise—which has not only liberated 25 million people from 25 years of genocidal dictatorship, but has included a nationwide reconstruction punctuated by hundreds, thousands, of individual acts of beneficence and kindness by American soldiers?

Indeed, this panic, I believe, is due, among other things, to the fact that America has enjoyed such success and has had to sacrifice so little in recent time that Americans unfamiliar with the sacrifices and the moral purposes of previous engagements, such as World War I and World War II in particular, and Korea and Vietnam, unfamiliar with the horror of war and the requirement of a citizenry to back their fighters with steadfastness and courage and support, rather than panic at the first sign that something is going wrong.

This panic is due to a citizenry today that may not have been adequately educated to the fundamental purposes of why we are there—and to the extent that is the policymakers' fault, I will take responsibility for that as well—and perhaps are insufficiently grounded in the kind of conflicts we have fought in the past and why it was so important for the citizens in doing their part to support the effort and not panic at the first sign that something was going wrong.

I think of D-Day, the anniversary of which is coming up soon, and the terrible decision General Eisenhower had to make with the weather forecast suggesting a very difficult crossing of the channel, the predictions of German fortifications having been weakened being wrong so that when our troops hit the beaches, they were cut down by withering fire, the great number of casualties at Omaha Beach and all the rest where we thought it was going to go better than it did, and second-guessing of our generals all the way up to General Eisenhower would certainly have been warranted. But the American people did not do that, and the British people did not do that.

Winston Churchill, Franklin Roosevelt, and other leaders rallied the American people and the British people, the allies, to support the cause, notwithstanding the number of casualties that were occurring, notwithstanding the fact that efforts were going wrong.

This is what President Bush has tried repeatedly to do, to say: Look, we knew when we went into this it would be difficult, it would be costly, it would take a long time. I remember his State of the Union Address in which he said that, and it has been repeated many times since.

I think one thing we all appreciate about President Bush is that he does have a resoluteness, a willingness to make tough decisions and then the courage to stand by them. But we Americans have to back him in that. You cannot panic when the going gets tough. And in war, sometimes the going does get tough.

This is a case where it was due to our own fault. Some of our own soldiers did

something very wrong, and we have to deal with that. But that is not a reason to panic and believe that the effort in which the other 135,000 are engaged is wrong or is falling apart and cannot be achieved.

It is rather a time for us to go back to our moorings, what Americans believe in and what we understand was the purpose of this effort, and do what we can do in this effort, which is to support the effort, to support the decisionmakers, to support the Commander in Chief and, most of all, to support the troops.

I think of Pat Tillman, who played football in my home State, who decided to forego a lucrative football contract with the Arizona Cardinals because he wanted to do his part in this effort. He went to Iraq and then went to Afghanistan and was killed there. He did his part. The challenge to us is, what can we do? We cannot go over there and fight, but we can sure do something to support those who are doing the fighting. I do not mean we cannot question. That is our job. We do not just meekly go along with what everybody says about this, but we can certainly not do anything to undercut the effort of those putting their lives on the line. That is what we can do. That is our part. And it starts with not panicking, as Charles Krauthammer said.

Things go wrong in war. They went wrong in every war we fought. We practically got pushed off the Korean peninsula in the Korean war. Then General MacArthur, in a brilliant move in Inchon, landed behind enemy lines, drove the enemy back, and did what Americans always do in the end: We succeed when we do not panic.

I suggest to those who are wringing their hands today about what is going on in Iraq to just take a deep breath, stiffen your spine, and remember what this country has gone through in its great history. We have sacrificed a lot and it has been for good, moral purpose, and such is the case in Iraq.

Let me quote again from the Krauthammer op-ed:

We are obsessing about the wrong question. It is not: Is our purpose in Iraq morally sound? Of course it is. The question today, as from the beginning, remains: Is that purpose achievable?

Then he goes on to say this:

Doability does not hinge on the pictures from Abu Ghraib. It hinges on what happens on the ground with the insurgencies. The greater general uprising that last month's panic-mongers had predicted has not occurred. The Sadr insurgency appears to be waning. Senior Shiite clerics, local leaders and demonstrators in the streets of Najaf have told Moqtada Sadr to get out of town. Meanwhile, his militia is being systematically taken down by the U.S. military.

As for Fallujah, we have decided that trying to fully eradicate Sunni resistance is too costly in U.S. lives. Moreover, this ultimately is not our job but one for the 85 percent of Iraqis who are not Sunni Arabs—the Shiites and Kurds who will inherit the new Iraq. We have thus chosen an interim arrangement of local self-rule in the Sunni

hotbeds. And if that gets us through the transition of power to moderate Iraqis, fine.

This seems entirely lost on the many politicians and commentators who have simply lost their bearings in the Abu Ghraib panic. The prize in Iraq is not praise for America from the Arab street nor goodwill from al-Jazeera. We did not have these before Abu Ghraib. We will not have these after Abu Ghraib. The prize is a decent, representative, democratizing Iraq that abandoned the pan-Arab fantasies and cruelties of Saddam Hussein's regime.

That remains doable. What will make it undoable is the panic at home.

As I said, as usual, he is right on target.

So what does that teach us? Getting back to the beginning of the discussion of the Secretary of Defense and his responsibility, let's be careful of the message we send to the rest of the world. Some of my colleagues have said the Secretary must resign because we need to send a message to the Arab world. What message is it? That we are sorry? We have sent that message. That we take responsibility? We have already taken responsibility.

I think it sends a message of weakness. Remember what the mantra of Osama bin Laden is—that there are weak horses and strong horses, and the world will respect the strong horse. He believes he is the strong horse, that we are the weak horse. He cites over and over Lebanon, Somalia, Vietnam, and he believes that Iraq falls into the same category; that if his al-Qaida and their allies in Iraq can continue to inflict casualties on us, if we continue to have self-doubt, disunity, undercut our leadership, panic over what a few of our soldiers did in the prison, in the long run he will prevail because he is the strong horse and we are the weak horse. That is his entire philosophy, and it motivates a lot of people in that part of the world who hate us.

The way to defeat that philosophy is to be the strong horse because of our morality as well as our military power, because of what we stand for in terms of returning freedom to people who did not have it, and because we do not mean to gain anything personally from it except an additional degree of security from terrorists.

Mr. President, what we say matters. We need to conduct the debate and, indeed, a debate is entirely appropriate, but we need to conduct the debate in a way that will not undercut the effort of those who are putting their lives on the line. Sometimes even words in this Chamber go over the top. Sometimes words of my colleagues go over the top.

Certainly, there are many outside of this Chamber who reveal a panic of the kind that Charles Krauthammer has written about, which will undercut our ability to carry out our mission, and that, at the end of the day, is the important point.

So I urge my colleagues and all others who are discussing this issue to try to conduct the debate and discussion in a serious, responsible way that does not undercut the efforts of our leaders

and our troops on the ground. If we do that, then we will have done our part in achieving victory. We will have been responsible. We will not have undercut the effort, and I think we will have distinguished ourselves in the one way that we can act to achieve victory.

Teddy Roosevelt made a comment that kind of wrapped up what he did in life with all of the actions in which he engaged. Somebody asked him a question about his life and he said: I just have appreciated the opportunity that I have had to work on work worth doing.

What we are doing today is work worth doing. We need to remember that, be supportive of it, and be supportive of those we have asked to do the work.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DAYTON. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

#### TRANSPORTATION FUNDING

Mr. DAYTON. Mr. President, this week brought the disturbing news that the Senate, the House, and the White House might not be able to agree on a new transportation funding bill, that we would have to set it aside then until next year to be acted upon. That would be disastrous for my home State of Minnesota, and I suspect for many of the States my colleagues represent.

Traffic congestion in our main metropolitan areas in Minnesota has worsened at alarming rates during the past decade. The deterioration of our roads, highways, and bridges throughout greater Minnesota, more rural areas of our State, has also reached crisis levels. More and more of our highways have become unsafe due to this deterioration and congestion.

More motorists are dying, being injured or maimed as a result. Business owners and farmers find that transporting their goods and products to market takes longer and is more costly. Some of the seasonal national weight restrictions force major employers such as Polaris, Artic Cat, and Marvin Windows, which are located in northwestern Minnesota, to have to re-route their trucks, adding time, expense, and unreliability that become major drawbacks to operating a business in Minnesota.

Businesses executives, their employees and their families, have to take longer to drive to and from work, school, and weekend cabins, and they are less safe in doing so. Every day and night, many thousands of Minnesotans endure these delays and disruptions.