

ignored." John Paul Stevens was charged with "blatant insensitivity to discrimination against women." Anthony Kennedy was scrutinized for his "history of pro bono work for the Catholic Church" and found to be "a deeply disturbing candidate for the United States Supreme Court." And David Souter was described as "almost Neanderthal," "biased," and "inflammatory." One senator said Souter's civil rights record was "particularly troubling" and "raised troubling questions about the depth of his commitment to the role of the Supreme Court and Congress in protecting individual rights and liberties under the Constitution." That same senator condemned Souter for making "reactionary arguments" and for being "willing to defend the indefensible," and predicted that if confirmed, Souter would "turn back the clock on the historic progress of recent decades." At Senate hearings, witnesses cried that "I tremble for this country if you confirm David Souter," warning that "women's lives are at stake" and even predicting that "women will die."

The best apology for these ruthless and reckless attacks is for them never to be repeated again. Unfortunately, the record is not promising. Even before President Bush took office in January 2001, the now-Senate Democrat Leader told Fox News Sunday that "we have a right to look at John Ashcroft's religion," to determine whether there is "anything with his religious beliefs that would cause us to vote against him." And over the last four years, this president's judicial nominees have been labeled "kooks," "Neanderthals," and "turkeys." Respected public servants and brilliant jurists have been called "scary" and "despicable."

Unfortunately, honest debate about a nominee's record has not always been the standard, either. Records and reputations have been distorted beyond recognition. Rulings that stated one thing have been characterized to say precisely the opposite. For example, during the debate over the nomination of my former Texas Supreme Court colleague, Justice Priscilla Owen, I chronicled numerous examples of her previous rulings that were blatantly misrepresented by partisan opponents of her nomination.

Moreover, in recent weeks, we've begun to see a particularly odd tactic take form. Some lower-court nominees have been attacked for belonging to a movement that, to my knowledge, does not even exist—the so-called "Constitution in Exile." What's more, opponents of this fictional movement seem to talk out of both sides of their mouth. Senate Democrats excoriated Justice Owen in part for her refusal to adhere to an allegedly central tenet of the Constitution in Exile—the nondelegation doctrine. And it was four Ninth Circuit judges appointed by Presidents Clinton and Carter who recently used another alleged doctrine of the Constitution in Exile—the Commerce Clause—to strike down federal laws prohibiting the use of marijuana and the possession of child pornography. If a "Constitution in Exile" movement really exists, its membership seems to include Senate Democrats and Democrat-appointed federal judges.

Reasonable lawyers can and do often disagree with one another in good faith. They do so respectfully and honestly—without distortions and false charges of being "out of the mainstream." We should likewise demand that the Senate restore respectful and honest standards of debate to the confirmation process.

And whoever the nominee is, the Senate should apply the same fair process that has existed for over two centuries—and that is confirmation or rejection by majority vote. The rules governing the judicial confirmation process should be the same regardless of

which party controls the White House or the Senate. Since our nation's founding over two centuries ago, the consistent Senate tradition and constitutional rule for confirming judicial nominees—including nominees to the Supreme Court—has been majority vote. (In the case of Abe Fortas, his nomination to be chief justice was withdrawn, after a procedural vote revealed that his nomination did not command the support of a majority of senators.)

Indeed, throughout history the Senate has consistently confirmed judges who enjoyed majority but not 60-vote support—including Clinton appointees Richard Paez, William Fletcher, and Susan Oki Mollway, and Carter appointees Abner Mikva and L. T. Senter. Yet for the past two years, a partisan minority of senators tried to impose a 60-vote standard on the confirmation of President Bush's judicial nominees. Thankfully, that effort was recently repudiated, when the Senate restored Senate tradition by confirming a number of this president's nominees by majority vote.

The effort to change our 200-year custom and tradition by imposing a new and unprecedented supermajority requirement for confirming judges is dangerous to the rule of law, because it politicizes our judiciary and gives too much power to special interest groups. As law professor Michael Gerhardt, a top Democrat advisor on the confirmation process, has written, "the Constitution also establishes a presumption of confirmation that works to the advantage of the president and his nominees." According to Professor Gerhardt, a supermajority rule for confirming judges "is problematic because it creates a presumption against confirmation, shifts the balance of power to the Senate, and enhances the power of the special interests."

Senate Democrats have recently asked to be consulted about any future Supreme Court nomination—even though the Constitution provides for the advice and consent of the Senate, not individual senators, and only with respect to the appointment, not the nomination, of any federal judge. If senators want such a special role in the Supreme Court nomination process, the president should first insist on their commitment to the three principles described above.

After years of unprecedented obstruction, and destructive politics, we must restore dignity, honesty, respect, and fairness to our Senate confirmation process. That is the only way to keep politics out of the judiciary.

#### TRIBUTE TO JOAN PIERMARINI

Mr. ROBERTS. Mr. President, I would like to take a moment to recognize Joan Piermarini, who is retiring after 20 years of service to the Senate Select Committee on Intelligence. Joan has served the committee under seven chairmen—a testament to her dedication and loyalty. I thank Joan for her many tireless efforts and the significant contributions she has made to the committee. We congratulate her on a job well done and wish her many years of happiness with her family, especially her grandson Luke.

#### HONORING OUR ARMED FORCES

A COLORADO HERO: ARMY SFC CHRISTOPHER W. PHELPS

Mr. SALAZAR. Mr. President, I rise today to take a moment to remember

one of Colorado's fallen heroes: Army SFC Christopher W. Phelps. Sergeant Phelps was killed last week in Baghdad, Iraq, while serving this Nation. He was 39.

Sergeant Phelps was a native of Louisville, KY. He graduated Male High School in 1984 where he was a standout athlete, helping to lead the Bulldogs to the State football playoffs. Sergeant Phelps went on to Kentucky State and a junior college in Mississippi before he enlisted in the Army.

In the Army, Sergeant Phelps served in the first Gulf war, where he drove a tank. This past spring, he was deployed to Iraq as a member of the Third Armored Cavalry Regiment based out of Fort Carson in Colorado. He enjoyed serving in the Army and was proud to be serving his country so honorably. He was a natural leader, a trait reflected by the nickname the members of his platoon gave him: "Dad."

While serving in Iraq, Sergeant Phelps was deeply moved by what he saw. He wrote home of the terrible poverty he witnessed and how much work was left to be done in Iraq. But Sergeant Phelps knew, as so all of our men and women in uniform, that our efforts were making Iraq a better place.

In his high school yearbook, an 18-year-old Christopher Phelps selected as a quote: "Do all you can while you can before it is too late." Sergeant Phelps embodied this sentiment in everything he did, from his days as a high school athlete to his exemplary service to our Nation and to the cause of freedom.

SFC Christopher Phelps served this country with honor and distinction and we are all humbled by his sacrifice. To his wife, Bobbi, and his daughters and son, my prayers are with you, as are those of an entire nation. Christopher's service to and sacrifice on behalf of this Nation will never be forgotten.

#### DETENTION CENTER AT GUANTANAMO BAY, CUBA

Mr. LEAHY. Mr. President, at a Defense Department news briefing in December 2001, a reporter asked Secretary Rumsfeld why we should use Guantanamo Bay to hold detainees. Secretary Rumsfeld's answer was that he "would characterize Guantanamo Bay, Cuba, as the least worst place we could have selected." This was hardly a ringing endorsement. Now, 4½ years later, the administration and its defenders have been trying to change the subject from the legal morass that Guantanamo has become, and to argue that Guantanamo is like an island resort, with great food, top-notch medical care, and a view of the ocean.

These arguments are distractions from the real issue, which is the needless way that the administration's unilateralism in its decisions about Guantanamo have compromised American principles and ideals and weakened our moral leadership in the world. If the administration has improved conditions at the prison, I am glad to

know it. We may now run the most humane prison in the most scenic location in the world. But it is still a prison. Many prisoners have been kept in cells for more than 3 years without being charged and without a meaningful process to evaluate or challenge their detention. Regardless of how well the detainees are treated, it is not the American way to detain them indefinitely without an adequate hearing. These policies are not only beneath us, but they have radicalized an untold number of Muslims around the world. Even Secretary Rumsfeld had to admit last year that he did not know whether we were "capturing, killing or dissuading more terrorists every day than the madrassas and radical clerics are recruiting, training and deploying against us."

This is important because it is the ideals of the American people and of our great and good country, and our longstanding commitment to the rule of law, that are being compromised. These are not the policies of a great nation like ours, and this is not the American system of justice that has been a beacon to the entire world. We need not trade away our values and the principles that have guided us in order to feel safer or to be safer. And if we do that, we give those who would harm us a victory they could not win on any battlefield, and we cede leverage to them that they will never deserve.

Everyone in Congress agrees that we must capture and detain terrorist suspects, but it can and should be done in accordance with the laws of war and in a manner that upholds our commitment to the rule of law. In our recent hearing on detainees, Senator GRAHAM, a former Air Force lawyer who still serves in the Reserves, said that once enemy combatant status has been conferred upon someone, "it is almost impossible not to envision that some form of prosecution would follow." He continued, "We can do this and be a rule of law nation. We can prove to the world that even among the worst people in the world, the rule of law is not an inconsistent concept."

We know that some of the detainees have been wrongly detained. And many suspect there are others who have not yet been released, against whom the evidence is weak at best. In a January 8, 2005, New York Times article, a senior American official claimed "that the vast majority of the 550 prisoners now held at the American detention center at Guantanamo no longer had any intelligence value and were no longer being regularly interrogated." The article also quotes a veteran interrogator at Guantanamo who told the New York Times that it "became clear over time that most of the detainees had little useful to say and that they were just swept up during the Afghanistan war with little evidence they played any significant role."

The administration says these detainees are the "worst of the worst" and pose a continuing threat to the

safety of Americans. If that is true, there must be at least basic evidence to support it. No one advocates releasing terrorists. But it is the American way to provide a fair process to ensure that the detainees at Guantanamo really are a threat to our Nation. In a break with military tradition and regulations, the administration denied detainees even the limited process contemplated by Article 5 of the Third Geneva Convention, and established the Combatant Status Review Tribunal, CSRT, only after being rebuked by the Supreme Court in *Rasul v. Bush*. The CSRT affirmed the "enemy combatant" status of the Guantanamo detainees based on secret evidence to which the detainees were denied access, raising serious questions about the fairness of the process.

It is time for Congress to focus on the real issue, which is defending American ideals and our commitment to the rule of law. The chicken at Guantanamo may be wonderful, but this matters little to America's core values if we are imprisoning some people who may have been wrongly accused of supporting terrorism and who have no way to challenge their detention.

The administration is trumpeting the humane treatment of detainees at Guantanamo as a diversion. Guantanamo is a symbol of the needless problems created by the unilateral ways this administration has chosen to proceed since 9/11. It is being used to deflect attention from this administration's deliberate rejection of the rule of law.

#### ADDITIONAL STATEMENTS

##### CBR YOUTH CONNECT

• Mr. ALLARD. Mr. President, I rise to make a few remarks concerning CBR Youth Connect.

"Youth are our focus and our future, connecting is our job." This statement represents the newly expanded vision of Colorado Boys Ranch, CBR, Youth Connect, a foundation with a 45-year history of helping troubled young men become productive citizens in their communities and throughout the world. CBR Youth Connect offers more than 200 applied learning opportunities and nontraditional programs and therapies, each one designed to help youth enhance their skills, attitudes, and relations with others. Programs and services range from animal-assisted programs to family therapy to an accredited school system. Each program and service offered by CBRYC is designed to contribute to a boy's overall treatment plan, helping him learn, grow, and develop as an individual.

The roots for CBR Youth Connect were planted in 1958 when county judges, from various districts in the State of Colorado, envisioned a rural orphanage that would be an ideal setting for dependant and neglected boys.

They found their setting in the agrarian community of La Junta, located in Colorado's southeast corner. And with the admittance of the first boys in 1961, the Colorado Boys Ranch was born.

From the moment of conception, the mission of the Colorado Boys Ranch has been to do whatever is necessary to help each troubled boy. Over the last 45 years, CBR has developed from a Colorado orphanage into a highly accredited national mental health treatment and education organization serving youth with severe mental health needs. Due to the hard work and dedication of their highly experienced staff, CBR has garnered various accomplishments, including a customer satisfaction rating of 96 percent from parents, youth, and referral services. CBR Youth Connect has recently been rated as "one of the best in the nation" by the rigorous Joint Commission on Accreditation of Health Care, and it features one of the largest, most comprehensive data bases in the Nation for analysis and research of adolescent mental health.

In 2003, with a decrease in public funding, the Colorado Boys Ranch Board felt confident that the ranch could evolve into a new organizational structure. Recognizing the commitment of their dedicated staff and CBR's extraordinary success rate, the board believed that they could transform into an organization that would reach many more youth, families, and advocates. Their new vision statement was based on the notion that: "Youth are our focus and our future, connecting is our job." Their goal is to connect youth and their families with knowledge, relationships, and resources; and out of this fresh outlook came with it a new name: CBR Youth Connect.

Currently more than 120 youth, ages 10-21, from all ethnic, cultural, geographic, and socioeconomic backgrounds are admitted to CBR Youth Connect each year. With the advent of their new organizational structure and expanded vision, CBR Youth Connect hopes to expand their reach to troubled youth around the world with the hopes of becoming recognized as the foremost leader in psychiatric residential treatment and education. To accomplish this goal, staff members are traveling to countries around the world, providing the latest in research, treatment, and education to help troubled youth and their families.

I salute CBR Youth Connect.●

##### HONORING THE CAREER OF CHARLES W. PHILLIPS

• Mr. BAYH. Mr. President, I rise today to recognize the great achievements of Charles W. Phillips, director of the Indiana Department of Financial Institutions. After 16 years serving the citizens of our State, Charlie Phillips is entering into a well-deserved retirement. Over the years, he has contributed to the safety and soundness of Indiana's banking industry, and I am honored to have the opportunity to