Again, I appreciate the help of Senators KENNEDY and ENZI and their talented staff in getting this amendment included in this bill. They have been very helpful, and I look forward to providing them any assistance they need in order to keep this in conference.

Mr. GREGG. Mr. President, last week, the FDA just sent out a warning to American consumers regarding purchasing medications from certain Internet sites because the FDA cannot verify that the drugs purchased over those sites are going to be safe or that they won’t be counterfeit. We need to give the FDA the authority and the resources to address the issue of unsafe Internet pharmacies and the Gregg Internet pharmacy amendment does just that. It creates a comprehensive framework to assure consumers that they can shop with confidence, knowing that the drugs they purchase online will be safe and effective. Hopefully, we will address this important and timely drug safety issue, if not now, at least before this bill completes the whole process and comes back from the conference committee.

Mr. KENNEDY. I thank the Senator from New Hampshire for his interest and work on this important issue. Ensuring that people have access to safe and effective medications when purchasing prescription drugs online is an important part of our efforts in the area of drug safety. The Dorgan legislation in this bill includes some provisions on the issue of Internet pharmacies, but I am willing to work with my colleague and our colleagues in the Senate to enhance these provisions to address the important issues he has raised over the course of this debate.

Mr. ENZI. I would also like to take the opportunity to express my support for the need to address the issue of unsafe Internet pharmacies. We have worked very hard in other portions of this bill to ensure the safety of prescription drugs on the market, and as this bill advances, I look forward to working with you both to enhance the provisions in this bill relating to the safety of Internet pharmacies.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

MORNING BUSINESS

Mr. BROWN. I ask unanimous consent that the Senate now be a period of morning business with Senators permitted to speak therein for up to 10 minutes.

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

IN RECOGNITION OF TOM CLEWELL

Mr. REID. Mr. President, I rise today to recognize the contributions of Tom Clewell to Sparks, NV. After serving the city of Sparks for more than 36 years, Tom retired from his 3-year post as fire chief on May 4, 2007.

Tom is a native Nevadan, attending school in Reno and raising a family in Sparks. He joined the Sparks Fire Department as a temporary firefighter in April 1971, and eventually climbed the ranks to become the city’s 10th fire chief in its history. He served in many roles with the Sparks Fire Department including operator, captain, battalion chief, and division chief.

Throughout his 36 years, Tom led the fire department through many changes. In 1997, Tom reorganized the department creating four division chiefs. Tom also encouraged greater training of firefighters in Sparks. He also managed the rapid growth surrounding Sparks and introduced fire prevention measures as housing developments began heading toward the foothills.

Upon his retirement, the city manager of Sparks said, “Tom has been one of the greatest leaders I have ever been associated with. His community service is without volume in Tom’s leadership. I have known Tom for many years. His professional accomplishments are numerous, but I think Tom would likely describe his family as his greatest honor. He is the proud father of Angela and Lindsey. He shares in this joy with his wife Francine.

I am privileged to have the opportunity to honor Tom Clewell before the United States Senate today. I am certain that my amendment will in fact continue to serve the citizens of Sparks with the dedication he has shown over the past 36 years and I wish him well on his future endeavors.

GENOCIDE ACCOUNTABILITY ACT

Mr. DURBIN. Mr. President, S. 888, the Genocide Accountability Act, is the first legislation produced by the Senate Judiciary Committee’s new Subcommittee on Human Rights and the Law, which I chair. It is bipartisan legislation that I introduced with Senator TOM COBURN, ranking member of the Human Rights and the Law Subcommittee, Senator PATRICK LEAHY, chairman of the Judiciary Committee, and Senator JOHN CORNYN.

The Genocide Accountability Act would close a legal loophole that prevents the U.S. Justice Department from prosecuting individuals who have committed genocide. Currently, under our law, genocide is only a crime if it is committed within the United States or by a U.S. national outside the United States. The Genocide Accountability Act would amend 18 U.S.C. 1091, the Genocide Convention Implementation Act, to allow prosecution of non-U.S. nationals who are brought into or found in the United States for genocide committed outside the United States.

I recently received a letter from David Scheffer, U.S. Ambassador at Large for War Crimes from 1997 to 2001, which makes clear the impact that the Genocide Accountability Act could have. Ambassador Scheffer’s letter explains that the loophole in our genocide law hindered the U.S. Government’s efforts to secure the apprehension and prosecution of former Cambodian dictator Pol Pot, one of the worst war criminals of the 20th century. If the Genocide Accountability Act had been law when Pol Pot was alive and at large, maybe the United States would have been able to bring him to justice.

The Genocide Accountability Act recently passed the Senate unanimously. I urge the House of Representatives will pass it and the President will sign it into law.

The United States should have the ability to bring to justice individuals who commit genocide, regardless of where their crime takes place and regardless of whether they are a U.S. national. The Genocide Accountability Act would end this immunity gap in U.S. law.

Mr. President, I ask unanimous consent to have Ambassador Scheffer’s letter to which I referred printed in the Record.

There being no objection, the letter was to be printed in the Record as follows:

CENTER FOR INTERNATIONAL HUMAN RIGHTS, April 6, 2007.

We lost opportunities to achieve international justice.

Senator RICHARD DURBIN, Chairman, Senate Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Senator Durbin: you have asked me to recount how limitations in U.S. federal law during the 1990’s prevented the Clinton Administration, in which I served as U.S. Ambassador at Large for War Crimes Issues (1997-2001), from enforcing the speedy apprehension and prosecution of the former Cambodian leader, Pol Pot, on charges of genocide, crimes against humanity, or war crimes (“heinous crimes”) prior to his death in March 1998. Because such limitations in U.S. law remain, particularly with respect to the crime of genocide, it may be useful for Members of Congress to consider the historically devastating was this lost opportunity to achieve some measure of justice for the deaths of an estimated 1.7 million Cambodians under Pol Pot’s rule from 1975 to 1979.

In June 1997 the then two co-prime ministers of Cambodia, Hun Sen and Norodom Ranariddh, sent a letter to the Secretary-General of the United Nations seeking assistance to establish an international criminal tribunal that would bring to justice senior Khmer Rouge leaders, none of whom had been prosecuted with the sole exception of a highly dubious in absentia trial of Pol Pot and his foreign minister, Ieng Sary, in a Cambodia in 1979 shortly after the fall of the Khmer Rouge regime. The jointly-signed letter in June 1997 opened two pathways of action by the Clinton Administration: the first continues to this day, namely how to investigate and prosecute surviving senior Khmer Rouge leaders and bring them to justice before a credible court of justice; the second interrelated issue dealt with effective measures to apprehend and hold suspects in custody until they could be brought to trial.

Since no international criminal tribunal existed in 1997 that was specially designed to
investigate and prosecute senior Khmer Rouge leaders and because the judicial and political situations within Cambodia did not favor domestic prosecution at that time, we began in 1997 to examine options for prosecution of Pol Pot and his leadership colleagues before a yet-to-be-created international tribunal or before either U.S. federal or domestic courts. In March 1998, we were receiving signals that Pol Pot, who had been in hiding since his fall from power in 1979, might be located and in a position either to travel or surrender in Cambodia. I needed to find a jurisdiction (U.S. or foreign) willing to hold him until the international criminal tribunal that would facilitate his transfer to a court of competent jurisdiction.

Among the options examined at the time, the most desirable was the establishment of an international criminal tribunal by authorization of the U.N. Security Council acting pursuant to Chapter VII enforcement authority. This was the means by which the International Criminal Tribunals for the Former Yugoslavia and Rwanda were created. I pursued that option until the summer of 1999, when various factors made it unrealistic and required a change of strategy that ultimately resulted in the creation of a hybrid tribunal in Cambodia. The Extraordinary Chambers in the Courts of Cambodia, which were authorized by the U.N. Security Council and set up in April 2000, have been in operation since September 2008.

When we were very close to achieving apprehension of Pol Pot and flying him out of Cambodia, I asked the Justice Department officials for a legal analysis to determine if the customary law principles codified in the Convention on the Prevention and Punishment of the Crime of Genocide and the Genocide Convention Protocol (Articles 6 and Other Cruel, Inhuman or Degrading Treatment or Punishment) to the events that transpired in Cambodia in the late 1970’s, and joining those principles with the President’s broad authority under the foreign affairs powers of the U.S. Constitution. One must remember that the Genocide Convention Implementation Act (the Proxmire Act) was not adopted until 1988 and thus acts of genocide committed during the late 1970’s would not have been subject to prosecution even if the standard grounds for personal or territorial jurisdiction under the law were satisfied. The Justice Department officials put forward a theory that a federal court would be persuaded by the ex post facto limitation analysis and if the judicial effort failed, then an international criminal tribunal might be authorized by the U.N. Security Council. That concern meant that Justice need not risk the political implications of a possible failure to create an international criminal tribunal with jurisdiction to prosecute senior Khmer Rouge leaders.

But Pol Pot was not a natural candidate for a genocide prosecution before any U.S. court. Under 18 U.S.C. §1991(d) (1999), only an American citizen who is charged with committing genocide anywhere in the world or anyone (including an alien) who commits genocide in the United States can be prosecuted. This seemed incredulous to me at the time, given the example of the high risk gamble in federal courts, to a determined international criminal tribunal, to try to find a willing government somewhere who would accept Pol Pot (if captured) and either detain him until an international criminal tribunal could be created or prosecute him in its own courts.

Nonetheless, efforts were made by the Justice Department (beginning in late June 1977) to explore options under U.S. law for a possible transfer of Pol Pot to U.S. territory. At one point, the U.S. Secretary of State suggested that the U.S. could hold him in a designated departure facility until Pol Pot could be transferred to the jurisdiction of that tribunal. The roster of federal agencies from which personnel could be identified for this purpose was set forth in 18 U.S.C. §1114. The Central Intelligence Agency was listed in that roster of agencies. U.S. courts would have had jurisdiction over a crime committed (in this situation, in Cambodia) against U.S. personnel designated as international criminal tribunals. However, no such individual could be identified by the Justice Department. Therefore, we lost our best opportunity to detain Pol Pot or his colleagues on U.S. territory for more than about ten days if there was no likelihood of bringing them to trial before a federal court in the U.S. I believed that any perpetual detention that would unquestionably survive a habeas challenge. If we were not prepared to prosecute the senior Khmer Rouge leaders in federal court, including under the high-risk strategy of ex post facto limitation analysis, then any detention on U.S. territory was temporarially (no more than ten days), thus essentially serving as a way-station to a confirmed onward destination (namely, a for international tribunal, created for

These significant concerns, prompted by the presence of a genocide law that had jurisdiction over Pol Pot, provided the basis for the negotiations between the U.S. and the governments of Cambodia, Thailand, and the Philippines. The U.S. and Cambodia ultimately reached an agreement in May 1998 to transfer Pol Pot to Cambodia for prosecution. As a result, under the agreement, Pol Pot was transferred to the custody of the Cambodian authorities in August 1998. He was subsequently arrested and faced trial in the Extraordinary Chambers in the Courts of Cambodia.

In response to this concern, the Justice Department deployed lawyers to Yale University to examine documents from the Pol Pot era, where documents from the Pol Pot era were being stored, and ultimately to the Documentation Center for Cambodia in Phnom Penh, to examine documents that might implicate senior Khmer Rouge leaders. I seem to recall that those research efforts left the lawyers still concerned about whether a federal court would dismiss a habeas corpus petition by any one of the detainees that satisfied the Justice officials.

In search of any one of the senior Khmer Rouge leaders. These were critical arguments to factor into the overall strategy. Justice officials also knew that holding Pol Pot or his colleagues on U.S. territory indefinitely was not a viable strategy to re- receive the suspects. I need to emphasize, however, that Pol Pot was seen as a highly risky candidate for trial in Cambodia. The U.S. ultimately reached an agreement with Cambodia to transfer Pol Pot to Cambodia for prosecution. As a result, under the agreement, Pol Pot was transferred to the custody of the Cambodian authorities in August 1998. He was subsequently arrested and faced trial in the Extraordinary Chambers in the Courts of Cambodia.

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The second track of diplomatic strategy was to persuade U.N. Security Council members to join us in approving the establishment of an international criminal tribunal for those most responsible for the crimes of the Khmer Rouge leaders (including Pol Pot while he was still alive). This proposal went through various stages of evolution, and involved extensive negotiations, such as the prosecutor and the appeals chamber, with the International Criminal Tribunal for the Former Yugoslavia (ICTY), in early April 1998 I wrote to the Security Council closely with the U.S. Mission to the United Nations to formally present a draft resolution, but it was not approved, to other Security Council members for their consideration. Concerns by other members arose as to the meaningfulness of the effort for international justice if the threat to international peace and security in Cambodia that would trigger Security Council jurisdiction, whether the ICTY’s jurisdiction (or perhaps that of the International Criminal Tribunal for Rwanda) should be expanded, whether the Government of Cambodia would formally request such a tribunal, and whether the ICTY’s jurisdiction, with a draft statute for the tribunal approved by late April and early May of 1998 I worked on the Security Council and the General Assembly to find a jurisdiction willing and able to exercise a form of universal jurisdiction. I would have benefited, however, if we had had the joint custody arrangement that kept them out of prison in early 1999 finally were overtaken by the Cambodian National Assembly in early April, 1998, expanded to include Germany, to try to find a jurisdiction willing and able to prosecute Pol Pot and the senior Khmer Rouge leaders contrib-

As it turned out, not a single senior Khmer Rouge leaders surrendered out of arrangements that kept them out of prison in Cambodia, with the exception of Kang Kek Ieu (alias Comrade Duch), the chief of the notorious Tuol Sleng prison, who remains imprisoned to this day by Cambodian author-

The other story in this saga concerns my efforts to find the alternative jurisdiction before Pol Pot and the senior Khmer Rouge leaders were arrested and his state could be held until transferred to a newly established international criminal tribunal or prosecuted for genocide and other atrocity crimes. In all of these efforts, which I will describe briefly, the fact that the United States was incapable of prosecuting the crime of genocide against Pol Pot and the senior Khmer Rouge leaders was diplomati-

Without any leverage to threaten U.S. prosecution in the absence of an international or international jurisdiction if the re-

Mr. GRASSLEY. Mr. President, it is with sadness that I pay tribute today to a young man from Iowa who gave his life in service to his country. PFC Brian A. Botello was killed on April 29, 2007, while serving in Iraq as part of the 3rd Squadron, 61st Cavalry Regi-

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