purposes of investigating and prosecuting these individuals. But we had no expectation of it taking more than several months to find suitable jurisdiction (particularly given the hideout reality of Pol Pot finally in custody and our hope that having him in custody would spur Security Council interest in finding a means to prosecute him).

As it was a single senior Khmer Rouge leader was ever captured with the assistance of U.S. authorities. The cooperation of the Cambodian Government for detention of suspects was nonexistent. So the haggling, the logistical and political reasons, at least then I could have got ready with him in custody. Our vigorous efforts to capture Ta Mok (or secure his surrender) during the rest of 1998 and into early 1999 finally were overthrown when he was captured by Cambodian forces and detained in Phnom Penh. Other senior Khmer Rouge leaders surrendered under arrangements that kept them out of prison in Cambodia, with the exception of Kang Kea Lieu (alias Comrade Duch), the chief of the notorious Tuol Sleng prison, who remains imprisoned to this day by Cambodian authorities. So the habeas corpus concerns never were tested even under the remote circumstances that would have been presented with a joint custody arrangement.

The other story in this saga concerns my efforts to find the alternative jurisdiction before 1996 and his and his crime could be held until transferred to a newly established international 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 emotionally and politically crippling. It forced me to concede that the United States had not stepped up to the plate itself with some reasonable application of universal jurisdiction for genocide. How could I credibly persuade other governments to stretch their domestic law to prosecute Pol Pot et al. when the United States was not prepared to do so (and had as much if not more reason to try to do so in the case of Cambodia than, say, Sweden, Denmark, Norway, or Spain). If the United States had had the leverage which to prosecute Pol Pot, but was hampered for some political or logistical reason, at least then I could have argued with credibility that a foreign government was responsible to act forward and bring this man to justice. So I was dealt a very weak hand.

I pursued two tracks of diplomatic strategy to find a jurisdiction willing and able to prosecute Pol Pot and the senior Khmer Rouge leaders. Both tracks were launched immediately in June 1997 when the first opportunity arose to apprehend Pol Pot. The first track was to approach countries either with some capability in their domestic criminal justice system with the capacity to prosecute Pol Pot. These countries at first included Canada and Denmark and later, in April 1998, expanded to include Germany, Spain, Norway, Sweden, Australia, and Israel. Each of them declined the opportunity, but I insisted on resolution of the logistical concerns never were tested even under the remote circumstances that would have been presented with a joint custody arrangement.

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 the prosecution of senior Khmer Rouge leaders (including Pol Pot while he was still alive). This proposal went through various stages of evolution, and included different permutations, including when the prosecutor and the appeals chamber, with the International Criminal Tribunal for the Former Yugoslavia (ICTY), in July 1998, I presented the U.S. position with a draft statute for the tribunal appended, to other Security Council members for their consideration. Concerns by other members arose as to our willingness for the responsibilities for international justice, we must be able to demonstrate that our courts have, within reasonable parameters, the jurisdiction to prosecute the crime of genocide. Even if such jurisdiction may rest upon the discretion of, say, the Attorney General under certain extreme circumstances, we must be able to use it for the worthy purpose of achieving justice.

During the final negotiations for the Rome Statute of the International Criminal Court in July 1998, I presented the U.S. position that with respect to the crime of genocide, the International Criminal Court should exercise universal jurisdiction. That U.S. position in the negotiations was partly influenced by our unfortunate experience with Pol Pot months earlier. I would hope that given all of this experience reaching back to Pol Pot and even earlier, and given the logic that must apply to ending the crime of genocide, U.S. law at long last could reflect the illegality of this crime and if we aspire to arming our diplomats with the arguments they need to influence other governments to accept their responsibilities for international justice, we must be able to demonstrate that our courts have, within reasonable parameters, the jurisdiction to prosecute the perpetrators of genocide, including when they are non-citizens who stand on U.S. soil.

Respectfully,

DAVID SCHIFFER
Mayer, Brown, Rowe & Maw/Robert A. Helman Professor of Law, Director, Center for International Human Rights, Northwestern University School of Law.

HONORING OUR ARMED FORCES
PRIVATE FIRST CLASS BRIAN BOTELLO
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 Regiment, 2nd Infantry Division. My prayers go out to his mother Karyn, in Alta, IA, and his father Tony in Michigan. They can be proud of their son’s honorable service and the tremendous sacrifice he made for his country. All Americans owe a debt of gratitude to Brian Botello. His memory will live on among those other patriots who have laid down their lives for the cause of freedom.

I know that Brian’s loss will be felt particularly deeply in the small town of Alta where he grew up. I know that flags have been flown at half mast and everyone from his neighbors to classmates from high school to members of his church are sharing stories and grieving as they remember Brian. I have not felt the same level of comfort in the fact that Brian Botello died honorably as an American patriot and he is now in a better place.

GOOD FRIDAY AGREEMENT
Mrs. CLINTON. Mr. President, today marks a historic moment for Northern