

Our thoughts continue to be with all of those families with loved ones serving overseas.

Lance Corporal Welke led a full life, committed to his family, his Nation, and his community. It was his incredible dedication to helping others that will serve as his greatest legacy. Our Nation is a far better place because of Lance Corporal Welke's contributions, and, while his family, friends, and Nation will miss him very much, the best way to honor his life is to remember his commitment to service and family.

Mr. President, I join with all South Dakotans in expressing my sympathies to the friends and family of LCpl Joseph Welke. I know that he will always be missed, but his service to our Nation will never be forgotten.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, we are in morning business, are we not?

The PRESIDING OFFICER. We are in morning business.

Mr. DORGAN. Will the Senator yield for a unanimous consent request?

Mr. LEAHY. Of course I yield for that purpose.

Mr. DORGAN. I ask unanimous consent to be recognized following the presentation by Senator LEAHY.

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

The Senator from Vermont is recognized.

NOMINATION OF ALBERTO GONZALES TO BE ATTORNEY GENERAL

Mr. LEAHY. Mr. President, soon after we return in January, the Senate Judiciary Committee will begin consideration of the nomination of Alberto Gonzales for the position of Attorney General of the United States. I met with Judge Gonzales on November 17, soon after his designation as the President's nominee. I had that meeting in preparation for our hearings. I look forward to working with Senator SPECTER and the other members of the Judiciary Committee to assure a prompt and fair and thorough hearing on this important nomination in early January.

There is no secret that Judge Gonzales will be called upon to explain not only his vision of what the role of the Attorney General should be, but also how he would distinguish it from that of the White House Counsel. And he is also going to be asked about the role he has played in formulating the administration's policy on the treatment and interrogation of prisoners in U.S. custody overseas.

The scandal of Abu Ghraib, allegations of mistreatment in Guantanamo, investigations and charges from cases in Iraq and Afghanistan are serious matters. There are lingering questions. There is unresolved accountability left in their wake.

The Bush administration circled the wagons long ago. It has continually maintained that the abuses were simply the work of a few bad apples. But we know that the photos from Abu Ghraib do not depict an isolated incident. Abuses have occurred in many locations, including Afghanistan, Guantanamo Bay, and in a number of other facilities within Iraq.

I have long said that somewhere in the upper reaches of the executive branch, a process was set in motion that rolled forward until it produced this scandal. Even without a truly independent investigation, we now know the responsibility for abuse runs very high into the chain of command. Senior officials in the White House, the Justice Department, and the Pentagon set in motion a systematic effort to minimize, distort, and even ignore laws, policies, and agreements on torture and the treatment of prisoners. Defense Secretary Rumsfeld and later LTG Ricardo Sanchez authorized the use of techniques that were contrary to both U.S. military manuals and international law.

Former CIA Director Tenet requested, and Secretary Rumsfeld approved, the secret detention of a ghost detainee in Iraq so he could be hidden from the International Committee of the Red Cross.

These issues, especially when they involve the greatest democracy history has known, are a significant concern. But there are also issues in which the administration has been far less than forthcoming. In letters dated May 17 and June 15 of this year, long before the fall elections, long before the resignation of John Ashcroft, and long before he was designated by the President as nominee, I asked Judge Gonzales to describe his role in both the interpretation of the law and the development of policies that led to what I and many others considered to have been a disregard for the rule of law. Those letters of May 17 and June 15 remain unanswered as of today.

I have repeatedly emphasized to Judge Gonzales the need for responsiveness and accountability in these matters. Last Friday, I sent Judge Gonzales a letter reiterating my concerns. I emphasized the importance of full disclosure during this confirmation process.

I urge him to cooperate, to cooperate now with all members of the Judiciary Committee on both sides of the aisle on the full range of issues of oversight and accountability that come before us. That is something his predecessor did not do. That lack of oversight on the part of the Senate, the lack of accountability and lack of responsiveness on the part of the administration, should not continue.

I ask unanimous consent to have my December 3, 2004, letter to Judge Gonzales printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, December 3, 2004.

Hon. ALBERTO R. GONZALES,
Counsel to the President, the White House,
Washington, DC.

DEAR JUDGE GONZALES: I enjoyed our preliminary meeting and look forward to your confirmation hearings. In following up on our meeting, and to give you and your staff ample opportunity to prepare for the hearings, I write to reiterate several concerns that I have raised in prior discussions and correspondence. When we met on November 17, 2004, I said that these issues will be raised, by myself and other members of the Senate Judiciary Committee, during the upcoming hearings. Based on our conversation, I am encouraged by your willingness to answer questions about your role and your views in these matters.

Photographs and reports of prisoner abuse in Iraq and other locations show an interrogation and detention system operating contrary to U.S. law and the Geneva Conventions. In addition to the abhorrent images from the Abu Ghraib prison that were published last spring, actions that have occurred with Administration approval include the forcible rendition of individuals to nations where they may face torture, and the hiding of "ghost detainees" from the International Committee of the Red Cross. Reports of abuse continue to emerge. Just this week, The New York Times reported that the Red Cross has charged U.S. military authorities with using physical and psychological coercion "tantamount to torture" on prisoners at Guantanamo Bay. The Washington Post is reporting that in December 2003 Army generals in Iraq were warned in a confidential report that members of an elite military and CIA task force were abusing detainees. According to The Post, the report concluded that certain arrest and detention practices could be deemed to be "technically" illegal.

In letters dated May 17 and June 15 of this year, I asked you to describe your role in both the interpretation of the law and the development of policies that led to what I and many others consider to have been a disregard for the rule of law. These letters remain unanswered.

My concerns regarding the abuse of prisoners in U.S. custody did not begin with these letters. I have been seeking answers from the Administration for well over a year, before the abuses at Abu Ghraib came to light. In a very few cases my questions were answered, but with information that later proved to be less than accurate. For example, in a news conference on June 22, 2004, you stated, "In Iraq, it has always been U.S. position that Geneva applies. From the early days of the conflict, both the White House and the Department of Defense have been very public and clear about that."

However, an October 24, 2004, article in The Washington Post revealed yet another Justice Department memo authorizing actions that potentially violate the Geneva Conventions. The draft memo, dated March 19, 2004, apparently was written to authorize the CIA to transfer detainees out of Iraq for interrogation—a practice expressly prohibited by the Geneva Conventions. According to the memo's cover letter, it was drafted at your request.

In another example, a June 25, 2003, letter from Department of Defense General Counsel William Haynes stated that the United States was adhering to its international obligations including those under the Convention Against Torture. We later learned of an August 1, 2002, Department of Justice memorandum that twisted the definition of torture in unrecognizable ways. That memo was addressed to your. We also learned months

later of the rendition of a Canadian-Syrian citizen to Syria, despite his fear of being tortured there, and despite the Syrian government's well-documented history of torture. Unnamed CIA officials told the press that this man was in fact tortured in Syria.

The Committee and the Senate will want to know your role in these situations and your views with regard to the development of the legal justifications that appear to underlie so many of these actions. You will be called upon to explain in detail your role in developing policies related to the interrogation and treatment of foreign prisoners. The American public and the Senate that will be called upon to confirm your appointment deserve to know how a potential Attorney General, the chief law enforcement officer in the nation, will interpret and enforce the laws and how you will develop policy.

We want to know what the current policy on torture is, but since the Administration disavowed the August 1, 2002, memo, no public statement of policy has replaced it. Questions remain unanswered on a host of issues. Requests to the White House and the Department of Justice for relevant documents—including my requests to you in May and June of this year—have been ignored or rejected. I urge you and the Administration to provide the documents that have been requested by myself and others without further delay so that the hearings will be well informed.

Another key concern you will be called upon to discuss is how you view the duties and responsibilities of the Attorney General. As we discussed, I view the White House Counsel position and that of the Attorney General as quite distinct. You may well have viewed this President as your "client" while serving him at the White House, although the courts do not recognize an attorney-client privilege in that setting. We will want to know how differently you will act and view your responsibilities as the Attorney General of the United States.

Finally, I encourage you to commit to cooperating with all members of the Judiciary Committee on issues of oversight and accountability. In the 108th Congress, the Judiciary Committee failed to fulfill its oversight responsibilities. Accountability and improving government performance are sound and long established purposes of congressional oversight, and accountability has been lacking on these and other crucial issues. With a new Congress, and a new Attorney General, I expect a return to the diligent oversight envisioned by our Founders to ensure that the Executive Branch remains accountable to the American people.

Our meeting was a constructive beginning at the start of the confirmation process, and I look forward to your hearing early next month. In the meantime, Marcelle and I send our best wishes to you and your family and hope that you have a restful and rewarding holiday season.

Sincerely,

PATRICK LEAHY,
Ranking Democratic Member.

Mr. LEAHY. Mr. President, I yield the floor. I see the distinguished Senator from North Dakota now seeking the floor.

The PRESIDING OFFICER. Under the previous unanimous consent, the Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, let me ask consent to speak for 20 minutes in morning business.

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

SALE OF AGRICULTURAL GOODS TO CUBA

Mr. DORGAN. Mr. President, I want to speak today about several items, the first of which is the sale of agricultural goods to Cuba.

Some years ago, Attorney General John Ashcroft, who then was a U.S. Senator, and I, offered an amendment that opened the opportunity to sell agricultural commodities into the Cuban marketplace. For over 40 years that marketplace had been closed to American farmers because of an embargo.

The bill that Congress passed was called the Trade Sanctions Reform and Export Enhancement Act of 2000. It permitted agricultural sales to Cuba on the condition that the Cubans had to use cash in order to purchase agricultural commodities from this country. We have now sold over \$900 million worth of farm commodities to the Cuban marketplace for cash. In fact, about 1½ or 2 years ago, 22 train carloads of dried peas left North Dakota to be shipped into the Cuban marketplace—the first time in 42 years our farmers had an opportunity to sell into this market that the Canadians and the Europeans had been selling into all along.

That is what we did in the legislation. I felt that having an embargo on food shipments to Cuba all those years was wrong. It didn't affect Fidel Castro. We tried to injure Fidel Castro by slapping on this embargo which included food and medicine, which I thought was an insidious policy. It didn't hurt Fidel Castro. He never missed a breakfast, lunch, or dinner because we were not able to sell food into Cuba.

The same is true with travel restrictions. We prohibited Americans from traveling into Cuba except for those who are able to get a license from the Treasury Department, which is increasingly difficult to do. Restricting the American people's right to travel is not hurting Fidel Castro. It simply injures the American people. We can travel in Communist China and in Communist Vietnam but we can't travel in Cuba. I have held up a picture on the floor of the Senate of Joni Scott. She went to Cuba to distribute free Bibles. This administration's Treasury Department tracked her down and said we are going to try to slap a \$10,000 fine on you for distributing free Bibles in Cuba. I have also shown the picture of Joan Slote, a retired senior Olympian in her midseventies. She went to ride a bicycle in Cuba with a Canadian group. The Treasury tracked her down even as she was dealing with her son's brain cancer and slapped a fine on her and threatened, by the way, to seize her Social Security payments.

It is outrageous what this policy has been with respect to Cuba. But we had a small victory when Senator Ashcroft and I were able to change the law so that our farmers and ranchers could sell into the Cuban marketplace. Since then we have sold \$900 million of agricultural commodities for cash to Cuba.

In recent weeks something else has happened. It is apparent this administration is fighting every possible way to shut down the opportunities of farmers and ranchers to sell into the Cuban marketplace. Here is a new way. This chart shows part of the Trade Sanctions Reform and Export Enhancement Act of 2000 legislation. Here are the words that stipulate that the Cubans must pay "cash in advance" for food they purchase. And that is exactly what the Cubans have done for about \$900 million in shipments so far. But someone at Treasury took a look at this, and said, You know, there is a way to interpret these words to shut down these shipments even tighter. We will interpret cash in advance to mean the cash must be received by the exporter before anything can be shipped toward Cuba.

That is much different from the way the term cash in advance has been generally understood by the export community and the way I as an author would have understood what we meant. Up to now, cash in advance meant that you must pay cash before you take receipt of the product. That ship goes to Cuba with dried peas, or wheat, or flour, or beef. Before it is offloaded and the Cubans take possession, they must pay cash to the seller. It is very simple. You pay cash before you take possession of the product.

The Treasury Department has now found a way to say, Not good enough. The way sales have been made to Cuba for the past three years is not what the Treasury thinks the legislation says. We insist that the phrase cash in advance means you pay cash before anything gets loaded on the ship.

What is this about? It is about someone down at the Treasury Department who has decided they have found another way to see if they can stop our farmers and ranchers from selling into the Cuban marketplace. I was an author of the legislation, and they need to understand that I knew what I was doing, and I believe my colleague Senator Ashcroft and others in the Congress knew what they were doing. We were trying to provide access to the Cuban marketplace.

This country has now said for almost two dozen years the way to move Communist countries such as China and Vietnam toward greater human rights is through more trade and travel engagement to move them in the right direction. We have said that with China and with Vietnam, both Communist countries. The exception is Cuba. They say if we begin to allow people to travel in Cuba, to trade with Cuba, somehow that is pernicious and moves in the wrong direction.

At some point you have to say that is an argument that is completely devoid of common sense. But Congress has already acted on this. The Congress said it is all right and we believe we should be able to trade with Cuba provided that sale is for cash. The Cubans buy agricultural commodities from us.