

The diplomatic side of the colonel's career emerged in the 1990s. Not satisfied with what many consider easy assignments in U.S. Embassies, he immersed himself in history, culture, and language. He would become fluent in four foreign languages and attend the Pakistan Army Staff College. A crowning achievement for Colonel Koehlmoos—beyond leading soldiers in combat—was writing a major article about relations between the United States and Pakistan. His article, titled "Positive Perceptions to Sustain the U.S.-Pakistan Relationship," was published in the prestigious Army War College quarterly *Parameters*.

The decorations and badges earned during his distinguished service speak to his dedication and his skill: Defense Superior Service Medal, Bronze Star, NATO Medal, Army Commendation Medal, Armed Forces Expeditionary Medal, Global War on Terrorism, Meritorious Unit Citation, and several foreign nation awards. He was perhaps most proud of having earned the Master Parachutist Badge.

Colonel Koehlmoos was known to be a no-nonsense individual. He was always focused on the mission. But Randy had a soft spot. An unrelenting spiritual love of family dwelled inside this stoic, professional Army officer. His wife Tracey and his sons Robert and Michael and David meant absolutely everything to him. The colonel's larger family extended through his parents Larry and Karen Koehlmoos of Norfolk, Nebraska, to friends and colleagues around the world who revered his strength, compassion and leadership.

Today, I ask that God be with the family of Colonel Randall Koehlmoos. Their faith is strong, and I pray it brings them peace at this very difficult time. And may God bless all those serving in uniform and bless their families.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### PRESERVING CONSTITUTIONAL LIBERTIES

Mr. PAUL. Mr. President, James Madison, the father of the Constitution, warned:

The means of defense against foreign danger historically have become instruments of tyranny at home.

Abraham Lincoln had similar thoughts saying:

America will never be destroyed from the outside. If we falter, and lose our freedoms, it will be because we destroyed ourselves.

During war there has always been a struggle to preserve constitutional liberties. During the Civil War, the right

of habeas corpus was suspended. Newspapers were closed down. Fortunately, these rights were restored after the war. The discussion now to suspend certain rights of due process is especially worrisome given that we are engaged in a war that appears to have no end. Rights given up now cannot be expected to return.

So we do well to contemplate the diminishment of due process knowing that these rights we give up now may never be restored. My well-intentioned colleagues' admonitions in defending provisions of this Defense bill say we should give up certain rights: the right to due process. Their legislation would arm the military with the authority to detain indefinitely, without due process or trial, people suspected of association with terrorism. These would include American citizens apprehended on American soil.

I want to repeat that. We are talking about people who are merely suspected of terrorism or suspected of committing a crime and have been judged by no court. We are talking about American citizens who could be taken from the United States and sent to a camp at Guantanamo Bay and held indefinitely.

This should be alarming to everyone watching this proceeding today because it puts every single American citizen at risk. There is one thing and one thing only that is protecting American citizens, and that is our Constitution, the checks we put on government power. Should we err today and remove some of the most important checks on State power in the name of fighting terrorism, well, then, the terrorists have won.

Detaining citizens without a court trial is not American. In fact, this alarming arbitrary power is reminiscent of what Egypt did with its permanent emergency law. This permanent emergency law allowed them to detain their own citizens without a court trial. Egyptians became so alarmed at that last spring that they overthrew their government.

Recently, Justice Scalia affirmed this idea in his dissent in the Hamdi case saying:

Where the government accuses a citizen of waging war against it, our constitutional tradition has been to prosecute him in Federal court for treason or another crime.

Scalia concluded by saying:

The very core of liberty secured by our Anglo Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive.

Justice Scalia was, as he often does, following the wisdom of our Founding Fathers. As Franklin wisely warned:

Those who give up their liberty for security may wind up with neither.

Really, what security does this indefinite detention of Americans give us? The first and flawed premise, both here and in the badly misnamed PATRIOT Act, is that our pre-9/11 police powers were insufficient to stop terrorism. This is simply not borne out by

the facts. Congress long ago made it a crime to provide or conspire to provide material assistance to al-Qaida or other foreign terrorist organizations.

Material assistance includes virtually anything of value: legal, political advice, education, books, newspapers, lodging, or otherwise. The Supreme Court sustained the constitutionality of this sweeping prohibition. We have laws on the books that can prosecute terrorists before they commit acts of terrorism. Al-Qaida adherents may be detained, prosecuted, and convicted for conspiring to violate the material assistance prohibition. In fact, we have already done this.

Jose Padilla, for instance, was convicted and sentenced to 17 years in prison for conspiring to provide material assistance to al-Qaida. The criminal law does require and can prevent crimes from occurring before they do occur. Indeed, conspiracy laws and prosecutions in civilian courts have been routinely invoked after 9/11 to thwart embryonic international terrorism. In fact, in the Bush administration, Michael Chertoff, then head of the Justice Department's Criminal Division and later Secretary of the Department of Homeland Security, testified shortly after 9/11. He underscored:

The history of this government in prosecuting terrorists in domestic courts has been one of unmitigated success, and one in which the judges have done a superb job of managing the courtroom and not compromising our concerns about security and our concerns about classified information.

We can prosecute terrorists in our courts, and have done so. It is the wonderful thing about our country, that even with the most despicable criminal, murderer, rapist, or terrorist our court systems do work. We can have constitutional liberty and prosecute terrorists. There is no evidence that the criminal justice procedures have frustrated intelligence collection about international terrorism.

Suspected terrorist have repeatedly waived both the right to an attorney and the right to silence. Additionally, Miranda warnings are not required at all when the purpose of the interrogation is public safety. The authors of this bill errantly maintain that the bill would not enlarge the universe of detainees, people held indefinitely. I believe this is simply not the case.

The current authorization for the use of military force confines the universe to persons implicated in 9/11 or who harbored those who were. This new detainee provision will expand the universe to include any person said to be part of or substantially supportive of al-Qaida or the Taliban. But, remember, this is not someone who has been concluded at trial to be part of al-Qaida. This is someone who is suspected.

If someone is a suspect in our country they are usually accorded due process. They go to court. They are not automatically guilty. They are accused of a crime. But now we are saying

someone accused of a crime can be taken from American soil. An American citizen accused of a crime, a suspect of a crime, could be taken to Guantanamo Bay. These terms are dangerously vague.

More than a decade after 9/11 the military has been unable to define the earmarks of membership in or affiliation to either al-Qaida or other terrorist organizations. It is an accusation and sometimes difficult to prove.

Some say to prevent another 9/11 attack we must fight terrorism with a war mentality and not treat potential attackers as criminals. For combatants captured on the battlefield, I agree. But these are people captured or detained in America, American citizens. Mr. President, 9/11 did not succeed because we granted terrorists due process. In fact, 9/11 did not succeed because al-Qaida was so formidable but because of human error. The Defense Department withheld intelligence from the FBI. No warrants were denied. The warrants were not even requested. The FBI failed to act on repeated pleas from its field agents who were in possession of a laptop that may well have had information that may well have prevented 9/11. But no judge ever turned down a warrant.

Our criminal system did not fail. No one ever asked for a warrant to look at Moussaoui's computer in August, a month before 9/11. These are not failures of our law. These are not failures of our Constitution. These are not reasons we should scrap our Constitution and simply send people accused of terrorism to Guantanamo Bay—American citizens. These are failures of imperfect men and women in bloated bureaucracies. No amount of liberty sacrificed at the altar of the state will ever change that.

A full accounting of our human failures by the 9/11 Commission has proven that enhanced cooperation between law enforcement and the intelligence community, not military action or not giving up our liberty at home, is the key to thwarting international terrorism. We should not have to sacrifice our liberty to be safe.

We cannot allow the rules to change to fit the whims of those in power. The rules, the binding chains of the Constitution, were written so it did not matter who was in power. In fact, they were written to protect us and our rights from those who hold power with good intentions. We are not governed by saints or angels. Occasionally, we will elect people, and there have been times in history when those who come into power are not angels. That is why we have laws and rules that restrain what the government can do. That is why we have laws that protect us and say we are innocent until proven guilty. That is why we have laws that say we should have a trial before a judge and a jury of our peers before we are sent off to some prison indefinitely.

Finally, the detainee provisions of the Defense authorization bill do an-

other grave harm to freedom. They imply perpetual war for the first time in the history of the United States. No benchmarks are established that would ever terminate the conflict with al-Qaida, the Taliban, or other foreign terrorist organizations. In fact, this bill explicitly says that no part of this bill is to imply any restriction on the authorization of force.

When will the wars ever end? When will these provisions end? No congressional view is allowed or imagined. No victory is defined. No peace is possible if victory is made impossible by definition. To disavow the idea that the exclusive congressional power to declare war somehow allows the President to continue war forever, at whim, I will offer an amendment to this bill that will deauthorize the war in Iraq. We are bringing the troops home in January. Is there any reason why we should have an open-ended commitment to war in Iraq when the war is ending?

If we need to go to war in Iraq again, we should debate on it and vote on it. It is an important enough matter that we should not have an open-ended commitment to the war in Iraq. The use of military force must begin in Congress. Our Founding Fathers separated those powers and said Congress has the power to declare war, and it is a precious and important power. We should not give that up to the President. We should not allow the President to unilaterally engage in war.

Congress should not be ignored or be an afterthought in these matters and must reclaim its constitutional duties. These are important points of fact. Know good and well that someday there could be a government in power that is shipping its citizens off for disagreements. There are laws on the books now that characterize who might be a terrorist: someone missing fingers on their hands is a suspect according to the Department of Justice, someone who has guns, someone who has ammunition that is weatherproofed, someone who has more than 7 days of food in their house can be considered a potential terrorist.

If someone is suspected by these activities, do we want the government to have the ability to send them to Guantanamo Bay for indefinite detention? A suspect? We are not talking about someone who has been tried and found guilty; we are talking about someone suspected of activities. But some of the things that make us suspicious of terrorism are having more than 7 days' worth of food, missing fingers on their hand, having weatherproofed ammunition, having several guns at their house. Is that enough? Are we willing to sacrifice our freedom for liberty?

I would argue that we should strike these detainee provisions from this bill because we are giving up our liberty. We are giving up the constitutional right to have due process before we are sent to a prison. This is very important. I think this is a constitutional liberty we should not look at and

blithely sign away to the Executive power or to the military.

So I would call for support of the amendment that will strike the provisions on keeping detainees indefinitely, particularly the fact that we can now, for the first time, send American citizens to prisons abroad. I think that is a grave danger to our constitutional liberty. I advise a vote to strike those provisions from the bill.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. McCAIN. Mr. President, I listened to the discussion by Senator RAND PAUL, and I understand his theory. Facts are stubborn things, and 27 percent of those who have been released have been back in the fight. That is fact. That is fact. Some of them have assumed leadership positions with al-Qaida. That is fact.

The Senator from Kentucky wants to have a situation prevail where people are released and go back in the fight and kill Americans. That is his right. He is entitled to that opinion. But facts are stubborn things. The fact is 27 percent of detainees who were released went back into the fight to try to kill Americans.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. PAUL. With regard to releasing prisoners, I am not asking that we release them. I think there probably have been some mistakes with people who have been let go. What I am asking only is for due process, and we released some of those people without any kind of process and a flawed process. So we did make a mistake.

Due process does not mean, and believing in the process does not mean necessarily that we would release these people. Due process often convicts. Jose Padilla was given 17 years in prison with due process. So I do not think it necessarily follows that I am arguing for releasing prisoners. I am simply arguing that people, particularly American citizens in the United States, not be sent to a foreign prison without due process.

Mr. McCAIN. Mr. President, in response to that, we are not arguing that they be sent to a foreign prison. What we are arguing is that they are designated as enemy combatants. When they are enemy combatants, then they are subject to the rules and the laws of war. Again, I point out the fact that there have been a number who have been released who have reentered the fight, and that kind of situation is not something we want to prevail.

So as I said, facts are stubborn things, and they are designated as enemy combatants and will be treated as such during the period of conflict.

Mr. PAUL. My question would be, under the provisions, would it be possible that an American citizen then could be declared an enemy combatant and sent to Guantanamo Bay and detained indefinitely?

Mr. McCAIN. I take it that as long as the individual, no matter who they

are—if they pose a threat to the security of the United States of America, they should not be allowed to continue that threat. I think that is the opinion of the American public, especially in light of the facts I continue to repeat to the Senator from Kentucky—that 27 percent of the detainees who were released got back in the fight and were responsible for the deaths of Americans. We need to take every step necessary to prevent that from happening. That is for the safety and security of the men and women who are putting their lives on the line in the armed services.

I yield the floor.

Mr. DURBIN. Mr. President, is morning business time still pending?

The ACTING PRESIDENT pro tempore. Yes.

Mr. DURBIN. I ask unanimous consent that all morning business time be yielded back unless there is a request on the floor.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN. I yield the floor.

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1867, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1867) to authorize appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Levin/McCain amendment No. 1092, to bolster the detection and avoidance of counterfeiter electronic parts.

Paul/Gillibrand amendment No. 1064, to repeal the Authorization for Use of Military Force Against Iraq Resolution of 2002.

Merkley amendment No. 1174, to express the sense of Congress regarding the expedited transition of responsibility for military and security operations in Afghanistan to the Government of Afghanistan.

Feinstein amendment No. 1125, to clarify the applicability of requirements for military custody with respect to detainees.

Feinstein amendment No. 1126, to limit the authority of Armed Forces to detain citizens of the United States under section 1031.

Udall (CO) amendment No. 1107, to revise the provisions relating to detainee matters.

Landrieu/Snowe amendment No. 1115, to reauthorize and improve the SBIR and STTR programs, and for other purposes.

Franken amendment No. 1197, to require contractors to make timely payments to subcontractors that are small business concerns.

Cardin/Mikulski amendment No. 1073, to prohibit expansion or operation of the District of Columbia National Guard Youth Challenge Program in Anne Arundel County, MD.

Begich amendment No. 1114, to amend title 10, United States Code, to authorize space-available travel on military aircraft for members of the Reserve components, a member or former member of a Reserve compo-

nent who is eligible for retired pay but for age, widows and widowers of retired members, and dependents.

Begich amendment No. 1149, to authorize a land conveyance and exchange at Joint Base Elmendorf-Richardson, Alaska.

Shaheen amendment No. 1120, to exclude cases in which pregnancy is the result of an act of rape or incest from the prohibition on funding of abortions by the Department of Defense.

Collins amendment No. 1105, to make permanent the requirement for certifications relating to the transfer of detainees at U.S. Naval Station Guantanamo Bay, Cuba, to foreign countries and other foreign entities.

Collins amendment No. 1155, to authorize educational assistance under the Armed Forces Health Professions Scholarship Program for pursuit of advanced degrees in physical therapy and occupational therapy.

Collins amendment No. 1158, to clarify the permanence of the prohibition on transfers of recidivist detainees at U.S. Naval Station Guantanamo Bay, Cuba, to foreign countries and entities.

Collins/Shaheen amendment No. 1180, relating to man-portable air-defense systems originating from Libya.

Inhofe amendment No. 1094, to include the Department of Commerce in contract authority using competitive procedures but excluding particular sources for establishing certain research and development capabilities.

Inhofe amendment No. 1095, to express the sense of the Senate on the importance of addressing deficiencies in mental health counseling.

Inhofe amendment No. 1096, to express the sense of the Senate on treatment options for members of the Armed Forces and veterans for traumatic brain injury and post-traumatic stress disorder.

Inhofe amendment No. 1097, to eliminate gaps and redundancies between the over 200 programs within the Department of Defense that address psychological health and traumatic brain injury.

Inhofe amendment No. 1098, to require a report on the impact of foreign boycotts on the defense industrial base.

Inhofe amendment No. 1099, to express the sense of Congress that the Secretary of Defense should implement the recommendations of the Comptroller General of the United States regarding prevention, abatement, and data collection to address hearing injuries and hearing loss among members of the Armed Forces.

Inhofe amendment No. 1100, to extend to products and services from Latvia existing temporary authority to procure certain products and services from countries along a major route of supply to Afghanistan.

Inhofe amendment No. 1101, to strike section 156, relating to a transfer of Air Force C-12 aircraft to the Army.

Inhofe amendment No. 1102, to require a report on the feasibility of using unmanned aerial systems to perform airborne inspection of navigational aids in foreign airspace.

Inhofe amendment No. 1093, to require the detention at U.S. Naval Station Guantanamo Bay, Cuba, of high-value enemy combatants who will be detained long-term.

Casey amendment No. 1215, to require a certification on efforts by the Government of Pakistan to implement a strategy to counterimprovised explosive devices.

Casey amendment No. 1139, to require contractors to notify small business concerns that have been included in offers relating to contracts let by Federal agencies.

McCain (for Cornyn) amendment No. 1200, to provide Taiwan with critically needed U.S.-built multirole fighter aircraft to strengthen its self-defense capability against the increasing military threat from China.

McCain (for Ayotte) amendment No. 1066, to modify the Financial Improvement and Audit Readiness Plan to provide that a complete and validated full statement of budget resources is ready by not later than September 30, 2014.

McCain (for Ayotte) modified amendment No. 1067, to require notification of Congress with respect to the initial custody and further disposition of members of al-Qaida and affiliated entities.

McCain (for Ayotte) amendment No. 1068, to authorize lawful interrogation methods in addition to those authorized by the Army Field Manual for the collection of foreign intelligence information through interrogations.

McCain (for Brown (MA)/Boozman) amendment No. 1119, to protect the child custody rights of members of the Armed Forces deployed in support of a contingency operation.

McCain (for Brown (MA)) amendment No. 1090, to provide that the basic allowance for housing in effect for a member of the National Guard is not reduced when the member transitions between Active Duty and full-time National Guard duty without a break in Active service.

McCain (for Brown (MA)) amendment No. 1089, to require certain disclosures from post-secondary institutions that participate in tuition assistance programs of the Department of Defense.

McCain (for Wicker) amendment No. 1056, to provide for the freedom of conscience of military chaplains with respect to the performance of marriages.

McCain (for Wicker) amendment No. 1116, to improve the transition of members of the Armed Forces with experience in the operation of certain motor vehicles into careers operating commercial motor vehicles in the private sector.

Udall (NM) amendment No. 1153, to include ultralight vehicles in the definition of aircraft for purposes of the aviation smuggling provisions of the Tariff Act of 1930.

Udall (NM) amendment No. 1154, to direct the Secretary of Veterans Affairs to establish an open burn pit registry to ensure that members of the Armed Forces who may have been exposed to toxic chemicals and fumes caused by open burn pits while deployed to Afghanistan or Iraq receive information regarding such exposure.

Udall (NM)/Schumer amendment No. 1202, to clarify the application of the provisions of the Buy American Act to the procurement of photovoltaic devices by the Department of Defense.

McCain (for Corker) amendment No. 1171, to prohibit funding for any unit of a security force of Pakistan if there is credible evidence that the unit maintains connections with an organization known to conduct terrorist activities against the United States or U.S. allies.

McCain (for Corker) amendment No. 1172, to require a report outlining a plan to end reimbursements from the Coalition Support Fund to the Government of Pakistan for operations conducted in support of Operation Enduring Freedom.

McCain (for Corker) amendment No. 1173, to express the sense of the Senate on the North Atlantic Treaty Organization.

Levin (for Bingaman) amendment No. 1117, to provide for national security benefits for White Sands Missile Range and Fort Bliss.

Levin (for Gillibrand/Portman) amendment No. 1187, to expedite the hiring authority for the defense information technology/cyber workforce.

Levin (for Gillibrand/Blunt) amendment No. 1211, to authorize the Secretary of Defense to provide assistance to State National Guards to provide counseling and reintegration services for members of Reserve components of the Armed Forces ordered to Active