

to rectify a grave injustice that has been perpetuated upon our servicemen and women and pay tribute to a truly inspirational young woman, Kerryn O'Neill. Kerry O'Neill grew up in Kingston, Pennsylvania in my Congressional District, and I had the pleasure of nominating her for admission to the United States Naval Academy.

On December 1, 1993, Kerry O'Neill, a "graduate with the distinction" of the United States Naval Academy in the top ten percent of her class, was brutally murdered by her former fiancé, Ensign George Smith, while sitting in her on-base apartment watching a movie with a friend, who was also killed. Ensign Smith, who was to have commenced his first tour of duty on a nuclear submarine the next day, then shot himself.

O'Neill had a superb record at the Academy setting athletic records for the fastest time run by an Academy cross-country runner and for the indoor and outdoor track 5,000 meter runs. In 1992 she was the first female athlete in any Naval Academy sport to qualify for the NCAS Division I Championships. She was also the recipient of the Vice Admiral William P. Lawrence Sword as the outstanding female athlete in her class.

Her accomplishments, however, paled in comparison to her intelligence, dedication, and enthusiasm, which made her an "inspiration" to those who knew her. As James E. Brockington, Jr., Commander, USN wrote of Kerry, "Gone too soon is that smile that brightened the darkest of days. Lost are those sparkling eyes that mirrored our quest for perfection. A leader, a dreamer, a source of unparalleled excellence—she is gone too soon."

In attempting to understand this tragedy, and what could have caused Ensign Smith to commit such murderous act, Kerry's parents learned that Ensign Smith had scored in the 99.99th percentile for aggressive/destructive behavior in Navy psychological tests. To evaluate his psychological fitness for the unique demands of submarine duty, Ensign Smith had, two months before the shooting, been required to submit to the Navy's "Subscreen" test. Ensign Smith scored more than four standard deviations above the normal levels for aggressive/destructive behavior and more than two standard deviations above normal levels in six other categories. Because Ensign Smith's results were well above the two-standard deviations above norms in multiple categories, under non-discretionary Navy regulations his abnormal test results were referred to a Navy psychologist, who in turn was required to conduct a full evaluation. The Navy civilian psychology responsible for reviewing the unusual scores and evaluating Smith, simply fail to conduct any such review or evaluation. This failure to review was a clear violation of Navy regulations (Compl. Paragraphs 10-15; Pet. App. 15a-17a). A psychological evaluation could have identified the potential for this destructive act and possibly prevented this tragedy from occurring.

Based on this negligent behavior by the Navy psychologist, the O'Neills filed suit seeking damages for the injury and death of their daughter under the Federal Tort Claims Act. Their case was dismissed pursuant to the Feres doctrine, based on the reasoning that because at the time of her death Kerry O'Neill

was in her military quarters and was on active duty status, her injuries and death were "incident to military service."

In the 1950 case of *Feres v. United States*, the Supreme Court created a broad exception to the federal government's general liability under the Federal Tort Claims Act, where the service member's injury arises out of or is "in the course of activity incident to service." Since this initial ruling, the Court has departed from the original justifications for its holding and has expanded the ruling based on vague and broad policy justifications, not intended by Congress when it enacted the Federal Tort Claims Act. In passing the Federal Tort Claims Act, Congress intended to prohibit tort claims against the federal government by a military member or his or her family only when the injuries arise "out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war." Kerry O'Neill's death was the result of a social relationship and the negligent failure of a Navy civilian psychiatrist to further evaluate Ensign Smith, not due to her involvement in combat, and in actuality, not incident to her service.

Congress wrote the statute to prohibit claims for injuries "arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war," because we do not want to allow soldiers or their families to be able to sue the government in a combat situation, when countless decisions are made that ultimately result in the death or injury of the service member. In order to protect the integrity of military command decisions, we cannot have any and all instances of death or injury brought and questioned by juries.

Such considerations, however, do not necessitate that military personnel lose their ability to recover for clearly negligent behavior by the federal government, just as every other individual in this country is allowed to do. Unfortunately, the individuals hurt most by the Feres doctrine are those men and women who commit their lives to the service of their country. These individuals should be protected by our laws, not punished. As case after case has demonstrated, the consequences of this doctrine are unjust. Private Charles A. Richards, Jr., who was off-duty, was killed by an Army truck, whose driver had run a red light. He was driving home from work at Fort Knox to care for his then-pregnant wife. His wife was unable to recover damages. Another service woman, who had given birth to twins, discovered one of her twins suffered bodily injury and the other died due to the negligent prenatal care at a military hospital. She was unable to recover damages. Such unjust outcomes were clearly not the intention of Congress.

The Feres doctrine has been the subject of harsh criticism. In dissenting from the denial of rehearing en banc in *Richards v. United States*, four judges of the Third Circuit, including Chief Judge Becker, called the Feres doctrine a "travesty" and urged the Supreme Court to consider the case. Numerous law review articles have also been written on the case, decrying the doctrine. Additionally, Feres's critics have included at least three current Justices of the Supreme Court, who have argued that Feres was wrong when decided.

My legislation, like the companion bill introduced by the senior Senator from the Commonwealth of Pennsylvania, simply seeks to overturn the judicially created Feres doctrine, while leaving in place the original intention of Congress to prohibit tort claims arising out of combatant activities during times of war. The legislation amends the Federal Tort Claims Act to specifically provide that the Act applies to military personnel on active duty to the same as it applies to anyone else. There is no reason to deny our military men and women the just compensation they deserve when they are injured or killed as a result of the negligent actions of the Federal government or its agents outside the heat of combat.

Mr. Speaker, the legislation will not bring back Kerryn O'Neill, or the other two service members, who were harmed by their government in this one instance. Nor will this legislation bring compensation to their families. But hopefully, this legislation will right this unjust doctrine, and help to prevent similar tragedies in the future. We need to address this situation as quickly as possible and I urge my colleagues to support this bill.

HONORING CARYN BART OF RIVER
EDGE, NEW JERSEY

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. ROTHMAN. Mr. Speaker, today I pay tribute to Caryn Bart of River Edge, New Jersey, a nurse who works at Holy Name Hospital in Teaneck, who went far beyond the call of duty to help a family with their struggle through a horrible tragedy.

Armando and Erika Herrera, from Garfield, New Jersey, who both work at Holy Name Hospital, recently suffered the tragic loss of their seven-year-old son, Daniel. On June 9, 2000, mother and son traveled to visit relatives in Hungary. Two days later, while Mrs. Herrera lay down flowers at her mother's grave, an elevated headstone tipped over, fell, and fractured Daniel's skull.

As Mr. and Mrs. Herrera were naturally stunned and dazed by these events, not knowing what to do, Caryn Bart took it upon herself to help the Herrera's in their time of need. Ms. Bart, who has four children and is married to Steve Bart, became a registered nurse in 1997 after graduating from Bergen Community College.

Through Ms. Bart's facilitation, the Herreras received calls from doctors in London, Helsinki and New York. A special flight was arranged to take them to a children's hospital in London. All that could have been done was done. Unfortunately, Daniel died of his injuries a few days later.

Although nothing can help Armando and Erika Herrera through this terrible loss, the efforts of Ms. Bart must be acknowledged. She is truly a great American and worthy of much praise and thanks. What Ms. Bart did is a wonderful example of the gift of loving kindness. She is an inspiration and an example of what compassion generosity are for all of us.

Angels walk among us and many of the nurses of America, like Caryn Bart, are these angels.