

SENATE—Tuesday, April 25, 2000

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, in a few moments we will pledge allegiance to our flag with words that may have become faithfully familiar with repetition. As we affirm that we are one nation under You, dear God, shake us awake with the momentous conviction that You alone reign supreme and sovereign in this Nation and very powerfully and personally in this Chamber. Give us a renewed sense of Your holy presence and fill us with awe and wonder. This is Your Senate and the Senators are here by Your divine appointment and are accountable to You for every word spoken and every piece of legislation passed. Help them and all of us who work with them to live this day on the knees of our hearts, with renewed reverence for Your presence and profound gratitude for the grace and goodness of Your providential care for our beloved Nation. May all that we say and do this day be done by Your grace and for Your glory. For You are the Lord, the Creator, and our Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable GEORGE VOINOVICH, a Senator from the State of Ohio, led the Senate in the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Arizona.

SCHEDULE

Mr. KYL. Mr. President, today the Senate will begin debate on the motion to proceed to S.J. Res. 3, proposing an amendment to the Constitution to protect the rights of crime victims, until 12:30 p.m. Following that debate, the Senate will stand in recess until the hour of 2:15 p.m. in order for the weekly party caucuses to meet. At 2:15, the Senate will proceed to a vote on the motion to invoke cloture on the motion to proceed to S.J. Res. 3. If cloture is not invoked on the motion, then a second vote will occur on cloture on the substitute amendment to the marriage tax penalty bill.

I thank my colleagues for their attention.

ORDER OF PROCEDURE

Mr. KYL. Before we begin, I will also ask unanimous consent that Senator SPECTER address the Senate for 10 minutes on an unrelated matter.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, I hope in the process of the debate this week we get some information from the majority as to when we are going to be taking up the conference report on juvenile justice, when we will be taking up the conference report on the Patients' Bill of Rights, when we are going to start doing some substantive things on education. The session is winding down. We have 13 appropriations bills with which we must deal in the process. I think it would be a real shame if we finished the year without having worked on some of these issues the American public want most, including doing something about prescription drugs for senior citizens and the rest of the American public.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania has 10 minutes.

Mr. REID. Mr. President, there was a unanimous-consent request in that regard that has not been approved yet.

Mr. KYL. I wanted to note that I am sure the majority leader will be happy to respond to all of the elements the distinguished minority whip has raised when he is able to reach the floor.

Mr. REID. Mr. President, I have no objection to the Senator from Pennsylvania speaking for 10 minutes as long as the minority also has 10 minutes to speak in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the motion to proceed to S.J. Res. 3 which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to S.J. Res. 3 proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 10 minutes.

Mr. SPECTER. I thank my distinguished colleague from Arizona for yielding me a few moments this morning.

ELIAN GONZALEZ

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the case involving young Elian Gonzalez. At 11 o'clock this morning, Senator LOTT has scheduled a closed-door proceeding with Attorney General Reno, and there are a number of important outstanding questions which, in my view, should be addressed.

At the outset, let me make it plain that I believe and have believed that young 6-year-old Elian Gonzalez should have been reunited with his father at the earliest possible time. I believe that as a legal matter there is no real justification for any asylum proceeding to keep young Elian Gonzalez in the United States. The purpose of asylum is to protect an alien from going back to a country where he or she will be persecuted. That certainly is not the case with Elian Gonzalez. He would be adulated.

Nonetheless, I believe there are some very serious issues which have arisen that the Congress ought to address, and the most prominent of those is the manner in which Elian Gonzalez was taken into custody. In my opinion, there were less intrusive ways in which that could have been accomplished. The Immigration and Naturalization Service said that they proceeded at 5 a.m. because they did not want to have any interference from the crowd. The avoidance of interference from the crowd could have been accomplished at high noon if the crowd were to have been moved back several blocks, which is customary where people have a right to demonstrate, people have a right to express themselves, but they do not have the right to do it right at the location where there may be other interests which have to be preserved. Had the crowd been several blocks away, there would have been no difficulty in taking whatever action was deemed appropriate without the risk of having a problem with the crowd.

Once the Immigration and Naturalization Service agents were directed to move in to take custody of young Elian, they had been armed to protect

themselves. But the action necessitating their being armed had very great potential for violence. It was a potential powder keg. Fortunately, there were no serious injuries. But there could have been. And it is my view that there ought to be a look by the Congress at ways to improve these procedures in the future.

The Supreme Court of the United States, in the case of *Garner v. Tennessee*, issued a ruling involving a Tennessee statute which involved law enforcement officers using deadly force against a fleeing felon even if that felon was unarmed. The Supreme Court of the United States held that this statute was unconstitutional because deadly force may not be used unless it is to save lives or avoid grievous bodily injury. Now, the problem with what was done by the INS in moving in with drawn weapons at 5 a.m. was that it could have triggered a chain reaction which could have led to violence. And there was really no necessity. They were not dealing with the customary INS case where they have a suspected terrorist or a violent criminal. This is not a John Dillinger who has to be taken into custody. That matter could have waited another day.

When I read the morning papers last Friday that the Department of Justice was considering moving in to take young Elian Gonzalez, I wrote to both the Attorney General and the President and expressed the view that there were a number of less intrusive alternatives which could have been undertaken. And I pressed hard at that time for them to have a court order.

When the President said the Federal court ordered Elian Gonzalez taken into custody, that is not correct. The Court of Appeals for the 11th Circuit specifically refused to decide and declined to issue an order requested by the Department of Justice to have the uncle turn over Elian to INS so he could be turned over to the father. The district court did not deal with the custody issue either, but only decided that if there were to be an application for asylum, the proper person to make that was the father and not the uncle.

On this state of the record, there is a very serious legal issue as to what authority the INS had to take Elian into custody. They certainly were not going to take him into custody to deport him because there was an order of the circuit court prohibiting that until the circuit court had decided the case.

There is, in my opinion, a need for Congress to take a look at another issue. The Department of Justice, regrettably, does not have a good record at Ruby Ridge or at Waco. I chaired the subcommittee hearings on Ruby Ridge which led to a change in the FBI rules on use of deadly force and currently am chairing a special task force of a subcommittee looking into Waco. In the context of what happened at

Ruby Ridge and Waco and what happened with the potential powder keg in Miami last Saturday morning, it is my view the Congress ought to consider institutionalizing some permanent unit within the Department of Justice.

The raid, which was conducted at 5 a.m., has the potential—and it is hard to determine—of leaving very deep scars on young Elian Gonzalez. When it occurred, the question came into my mind as to why the father was not at the scene, if not present at the house, but close to the scene to assist in soothing young Elian. I think the entire matter could have been avoided had the crowd been cleared, had there been a court order, had the Government taken up the representation of the uncle's lawyer that Elian would be peacefully turned over.

In the interim, it is my hope that the proceedings in Federal court will be expedited. I ask unanimous consent that the letters I wrote to Attorney General Reno and President Clinton be printed in the RECORD at the conclusion of my statement.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, those letters set forth in some greater detail the way those hearings can be expedited. When the Million Man March occurred in 1998 in New York City, the Federal court ruled on August 26, and the court of appeals took it up on September 1 and issued a 9-page opinion the same day. In the Pentagon papers case, only 18 days elapsed from the publication of the papers until the case went through the district court, the court of appeals, and the Supreme Court of the United States. I renew my suggestion to the Department of Justice to expedite those proceedings.

Ultimately, Elian will be returned with his father to wherever they choose to go. I hope they will stay in the United States, but that is a matter for the Gonzalezes to determine. Juan Miguel Gonzalez is the father, having parental responsibility for the child, but these are issues as to the use of this extraordinary force and what should be institutionalized in the Department of Justice, which I think the Congress should look into in oversight hearings, not to attach any blame but to improve procedures and approaches for the future.

Again I thank my distinguished colleague from Arizona and yield the floor.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, April 21, 2000.

Hon. JANET RENO,
Attorney General, U.S. Department of Justice,
Washington, DC.

DEAR ATTORNEY GENERAL RENO: I am deeply concerned about reports in today's media that you may initiate action through Federal law enforcement agencies to take Elian

Gonzales from the residence of his relatives in Miami and return him to his father. My concern arises from the experience at Ruby Ridge, a subject on which I chaired Judiciary Subcommittee hearings and also on the Waco incident, on which I am now chairing a Judiciary Subcommittee on Department of Justice oversight.

In advance of any such action there are a number of alternatives which could be pursued. For example, the Court of Appeals for the 11th Circuit could be asked to expedite the appeals process. There are many precedents for prompt, expedited Circuit Court action such as that taken by the Court of Appeals for the 2nd Circuit on the Million Man March case in 1998. There, the District Court, by order dated August 26, 1998, allowed the March for September 5 and the Circuit Court heard arguments on September 1, 1998 and issued a written opinion the same day.

Another option would be to ask the Court of Appeals for the 11th Circuit to hear the case en banc which could be accomplished very promptly.

Yet another option is to ask the Supreme Court of the United States to take the case and hear it on an expedited basis which that Court has the authority to do at any time. The Pentagon Papers were published on June 12, 1971. The District Court issued a decision on June 19, the 2nd Circuit heard the case on June 22 and decided the case on June 23. The Supreme Court heard arguments on June 26 and decided the case on June 30, 1971.

In a case involving the Iranian hostages, the Solicitor General asked the Supreme Court for the United States for certification before judgment on June 10, 1981. The Supreme Court granted the request on June 11, ordered briefs within one week, heard arguments on June 24 and decided the case on July 2, 1981.

There is good reason to believe that the order of the 11th Circuit three-judge panel will be reversed for a number of reasons. One glaring error is that there is no basis for asylum for Elian Gonzalez since that relief is granted when the individual faces persecution or some prospective ill treatment upon his return, which is certainly not the case with young Elian. If returned to Cuba, he will be the subject of adulation, not mistreatment.

Before resorting to action to take Elian from his Miami relatives, I urge you to seek a judicial order from the United States District Court authorizing such action by the Department of Justice. While perhaps not technically necessary, such an order might well be persuasive enough for the Miami relatives to turn Elian over voluntarily. Such an order may also be persuasive so that others would not impede Department of Justice action to take Elian from his Miami relatives.

I am sending a copy of this letter to the President, and I am sending you a copy of a letter I am writing to him.

Sincerely,

ARLEN SPECTER.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, April 21, 2000.
Hon. WILLIAM JEFFERSON CLINTON,
President, The White House, Washington, DC.

DEAR MR. PRESIDENT: With this letter, I am enclosing a copy of a letter which I am sending to Attorney General Reno suggesting a number of judicial remedies before any action is taken to return Elian Gonzalez to his father other than through a voluntary turning over of the boy by his Miami relatives.

I am writing to you and the Attorney General without being privy to any of the ongoing negotiations, but only because of my concern about what happened at Ruby Ridge and Waco which involved incidents where I have been extensively involved in oversight of the Department of Justice by Senate Judiciary Subcommittees.

If there is to be any action taken by Federal law enforcement officials other than a voluntary turning over by the Miami relatives of Elian Gonzales, then I urge you to be personally involved and to consult with experts in the field, in addition to officials at the Department of Justice because of the deeply flawed actions taken by the Department of Justice at Ruby Ridge and Waco and in other law enforcement judgments of the Attorney General.

As noted in my letter to the Attorney General, the hand of the Federal Government can be considerably strengthened by a District Court order authorizing the Department of Justice to take Elian Gonzales from his Miami relatives and returned to his father.

It may well be that taking the potential use of force off the table would materially damage the Government's bargaining position with the Miami Gonzales family; but if force is to be used, it must be used with mature, measured judgment contrary to what was done at Ruby Ridge and Waco.

Sincerely,

ARLEN SPECTER.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I seek recognition under the 10 minutes reserved on the Democratic side.

The PRESIDING OFFICER. The Senator is recognized.

REPUBLICAN PRIORITIES

Mr. DURBIN. Mr. President, we just heard a statement from the Senator from Pennsylvania which echoes the statements of many Republicans since the reuniting of Elian Gonzalez with his father. This was a very sad situation. The Attorney General's comments indicate she made extraordinary efforts on a personal basis and through the Department of Justice to resolve the differences between the members of this family involving this 6-year-old boy.

I am sorry it came to the process that it did in the early hours of the morning on Saturday. I understand up until the very last moment, negotiations were underway with the family, with the very basic goal of reuniting this little boy with his father.

I will never know what took place in those conversations, but I can certainly understand that when the decision was made to enforce the law, to enforce the subpoena, and to move forward, those agents who went into that home were entitled to protect themselves. They did not know, going into that home, whether there was any danger inside. The fact that they were armed, of course, is troublesome in the presence of a 6-year-old boy, but I do not believe a single one of us would ask any law enforcement agent in Amer-

ica—Federal, State, or local—to endanger their own lives by walking into a building without adequate protection and show of force.

I hope we will put this in perspective. I have been absolutely fascinated by the Republican response to this. To consider some of the statements that have been made by Republican leaders on Capitol Hill since this event in Miami tells us a great deal about their priorities. There is a passion, there is a commitment, there is a sense of urgency to drop everything we are doing on Capitol Hill and move into a thorough investigation of this episode which occurred in the early morning hours of Saturday to decide whether or not Attorney General Reno was doing the appropriate thing in the way she approached it.

My question to the Republican majority in the Senate and the House is: Where is your passion, where is your sense of urgency, where is your commitment when it comes to the gun violence which is occurring on the streets of America every single day?

Yesterday, here in our Nation's Capital, families who gathered at the National Zoo for an annual holiday witnessed gun violence which claimed some seven victims, one of whom is now on life support and may not survive. Yet for a year—one solid year—the Republican leadership on Capitol Hill has refused to bring forward any gun safety legislation. Overnight they can call for an investigation of Attorney General Reno. Overnight they can bring her to Capitol Hill because of this question of what occurred in Miami. But for one solid year, they have been unwilling and unable to step up and do anything about gun safety to protect children and families across America.

Mr. DORGAN. Will the Senator yield?

Mr. DURBIN. No one was injured in the house of Elian Gonzalez's relatives in Miami. Thank God. But kids are injured every day across America. Twelve children are killed every day across America because of gun violence, and this Republican majority, which has this passion to investigate, ought to have the passion to legislate, to pass laws to make America safer. I would like to see some proportionality in the way they respond to the real issues facing American families.

I yield to my colleague from North Dakota.

Mr. DORGAN. Mr. President, I appreciate the Senator yielding to me.

This is a very sad chapter. It is a story of a 6-year-old child who has been used as a political football now for some many months—yes, by Fidel Castro, but also by some in this country—and it ought to stop. What happened the other morning in Miami is something none of us wants to see in this country, but it happened without violence occurring. No one was injured,

and the fact is, a 6-year-old boy was restored to his father's care.

I have heard all of the stories and all of the words. I watched television last evening. I heard irresponsible statements about Waco, about storm troopers, all kinds of conjecture about secret meetings between Fidel Castro and officials in this country. Look, those things serve no purpose at this point.

This is a 6-year-old boy whose mother died and who now has been restored to the care of his father. Are there those here who believe that a 6-year-old boy whose father loves him should not be restored to the care of his father? If so, then let's have a long debate about parental rights. I suspect they do not want to restore this young boy to the care of his father because his father is a Cuban and he will go back to Cuba and that is a Communist country. But I do not see people coming to the floor of the Senate talking much about the fate of the children in Vietnam—that is a Communist country—or the fate of the children in China—that is a Communist country.

All of a sudden, this one 6-year-old child whose mother is dead and whose father wants him, because he comes from Cuba, does not have the right to be restored to the care of his father? Something is wrong with this.

I understand there is great passion on all sides. The Attorney General was faced with an awful choice, and she made a choice. The choice she made was to use whatever show of force was necessary—not force; show of force was necessary—to prevent violence while they were able to get this boy and restore him to the care of his father.

The fact is, it worked. In a little under 3 minutes, they were able to get this boy. This boy, now we see in a smiling picture, is in his father's arms where he ought to be.

I know we can criticize Janet Reno and others till the Sun goes down and every day thereafter, but it is not going to change the fact that this boy belongs with his father. We all know that. We should not use this boy for some broader political purpose of U.S.-Cuba relations, anti-Castroism, this, that, or the other thing. This is not about Fidel Castro. This is about a 6-year-old child and his father.

Mr. LEAHY. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. LEAHY. I am pleased to hear both of my distinguished colleagues talking about the necessity to protect those who go into a situation such as that. In an earlier career in law enforcement I had the experience of going on raids or arrests or hostage situations, oftentimes in the middle of the night. They are a very frightening thing.

I suspect those immigration officers and marshals also have families who worry about whether they are going to come back alive. They are entitled to