United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, FRIDAY, DECEMBER 30, 2005 No. 169

House of Representatives

PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES AFTER SINE DIE ADJOURNMENT OF THE 109th CONGRESS FIRST SESSION

COMMUNICATION FROM THE CLERK OF THE HOUSE AFTER SINE DIE ADJOURNMENT

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 22, 2005.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on December 22, 2005, at 4:55 pm:

That the Senate agreed to H. Con. Res. 326.

That the Senate agreed to conference report H.R. 2863.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

FURTHER COMMUNICATION FROM THE CLERK OF THE HOUSE AFTER SINE DIE ADJOURNMENT

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 23, 2005.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on December 23, 2005, at 10:30 am:

That the Senate passed S. 1783.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

BILLS AND A JOINT RESOLUTION APPROVED BY THE PRESIDENT AFTER SINE DIE ADJOURNMENT

The President, after sine die adjournment of the First Session, 109th Congress, notified the Clerk of the House that on the following dates, he had approved and signed bills and a joint resolution of the following titles:

December 21, 2005

H.R. 4440. An Act to amend the Internal Revenue Code of 1986 to provide tax benefits for the Gulf Opportunity Zone and certain areas affected by Hurricanes Rita and Wilma, and for other purposes,

December 22, 2005

H.J. Res. 38. A joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

H.R. 327. An Act to allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation.

H.R. 358. An Act to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the desegregation of the Little Rock Central High School in Little Rock, Arkansas, and for other purposes.

H.R. 797. An Act to amend the Native American Housing Assistance and Self-Determination Act of 1996 and other Acts to improve housing programs for Indians.

H.R. 3963. An Act to amend the Federal Water Pollution Control Act to extend the authorization of appropriations for Long Island Sound.

H.R. 4195. An Act to authorize early repayment of obligations to the Bureau of Reclamation within Rogue River Valley Irrigation District or within Medford Irrigation District.

H.R. 4324. An Act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the predisaster mitigation program, and for other purposes.

H.R. 4436. An Act to provide certain authorities for the Department of State, and for other purposes.

H.R. 4508. An Act to commend the outstanding efforts in response to Hurricane Katrina by members and employees of the Coast Guard, to provide temporary relief to certain persons affected by such hurricane with respect to certain laws administered by the Coast Guard, and for other purposes.

SENATE BILLS APPROVED BY THE PRESIDENT AFTER SINE DIE ADJOURNMENT

The President, after sine die adjournment of the First Session, 109th Congress, notified the Clerk of the House that on the following date, he had approved and signed bills of the Senate of the following titles:

December 22, 2005

S. 335. An Act to reauthorize the Congressional Award Act.

S. 467. An Act to extend the applicability of the Terrorism Risk Insurance Act of 2002.

S. 1047. An Act to require the Secretary of the Treasury to mint coins in commemoration of each of the Nation's past Presidents and their spouses, respectively, to improve circulation of the $1 coin, to create a new bullion coin, and for other purposes.

ENROLLED BILLS SIGNED

Mrs. Haas, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker pro tempore, Mr. Tom Davis of Virginia, on December 27, 2005:

H.R. 2863. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

H.R. 3010. An act making appropriations for the Departments of Labor, Health and

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Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 2006, and for other purposes.

H.R. 4525. An act to temporary extend the programs under the Higher Education Act of 1965, and for other purposes.

H.R. 4579. An act to amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to extend by one year provisions requiring parity in the application of certain limits to mental health benefits.

H.R. 4635. An act to reauthorize the Temporary Assistance for Needy Families block grant program through March 31, 2006, and for other purposes.

SENATE ENROLLED BILL SIGNED

The SPEAKER protempore, Mr. TOM DAVIS of Virginia, announced his signature to an enrolled bill of the Senate of the following title on December 27, 2005:

S. 2167. An act to amend the USA PATRIOT act to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to July 1, 2006.

BILLS PRESENTED TO THE PRESIDENT

Karen L. Haas, Clerk of the House reports that on December 28, 2005 she presented to the President of the United States, for his approval, the following bills.

H.R. 2863. Making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

H.R. 3010. Making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 2006, and for other purposes.

H.R. 4525. To temporarily extend the programs under the Higher Education Act of 1965, and for other purposes.

H.R. 4579. To amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to extend by one year provisions requiring parity in the application of certain limits to mental health benefits.

H.R. 4635. To reauthorize the Temporary Assistance for Needy Families block grant program through March 31, 2006, and for other purposes.

CORRECTION

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRSTSESSION

Vol. 151 WASHINGTON, FRIDAY, DECEMBER 30, 2005 No. 169

Senate

ROBERT F. KENNEDY, JR., ON AMERICA'S ANTITORTURE TRADITION

• Mr. KENNEDY. Mr. President, the Los Angeles Times of December 17, carried an important op-ed article, ''American's anti-torture tradition,'' by my nephew, Robert F. Kennedy, Jr.

Bobby is senior attorney for the Natural Resource Defense Council, and is also chief prosecuting attorney for Hudson Riverkeeper and president of the Waterkeeper Alliance. In addition, he is clinical professor and supervising attorney at the Environmental Litigation Clinic at Pace University Law School in White Plains, NY.

In the article, Bobby recounts the story of GEN George Washington's courageous decision during the Revolutionary War to insist that his soldier's treat British forces and prisoners humanely, even though American civilians and prisoners were treated brutally by the British. Indeed, as a British officer wrote at the time, ''Wherever our armies have marched, wherever they have encamped, every species of barbarity has been executed. We planted an irrevocable hatred wherever we went, which neither time nor measure will be able to eradicate.''

Our early leaders understood that our values are our greatest asset, and our own generation must never forget that fundamental principle.

I believe that Bobby's article will be of interest to all of us in Congress who care about this basic issue, and I ask that it be printed in the RECORD.

The article follows:

[From the Los Angeles Times, Dec. 17, 2005]

AMERICA'S ANTI-TORTURE TRADITION

(By Robert F. Kennedy, Jr.)

It is nice that the Bush administration has finally been pressured into backing a ban on cruel and inhumane treatment of prisoners. But what remains shocking about this embarrassing and distasteful national debate is that we had to have it at all. This administration's newfound enthusiasm for torture has not only damaged our international reputation, it has shattered one of our proudest American traditions.

Every schoolchild knows that Gen. George Washington made extraorindary efforts to protect America's civilian population from the ravages of war. Fewer Americans know that Revolutionary War leaders, including Washington and the Continental Congress, considered the decent treatment of enemy combatants to be one of the principal strategic preoccupations of the American Revolution.

''In 1776,'' wrote historian David Hackett Fischer in ''Washington's Crossing,'' ''American leaders believed it was not enough to win the war. They also had to win in a way that was consistent with the values of their society and the principles of their cause. One of their greatest achievement . . . was to manage the war in a manner that was true to the expanding humanitarian ideals of the American Revolution.''

The fact that the patriots refused to abandon these principles, even in the dark times when the war seemed lost, when the enemy controlled our cities and our ragged army was barefoot and starving, credits the character of Washington and the founding fathers and puts to shame the conduct of America's present leadership.

Fischer writes that leaders in both the Continental Congress and the Continental Army resolved that the War of Independence would be conducted with a respect for human rights. This was all the more extraordinary because these courtesies were not reciprocated by King George's armies. Indeed, the British conducted a deliberate campaign of atrocities against American soldiers and civilians. While Americans extended quarter to combatants as a matter of right and treated their prisoners with humanity, British regulars and German mercenaries were threatened by their own officers with severe punishment if they showed mercy to a surrendering American soldier. Captured Americans were tortured, starved and cruelly maltreated aboard prison ships.

Washington decided to behave differently. After capturing 1,000 Hessians in the Battle of Trenton, he ordered that enemy prisoners be treated with the same rights for which our young nation was fighting. In an order covering prisoners taken in the Battle of Princeton, Washington wrote: ''Treat them with humanity, and let them have no reason to Complain of our Copying the brutal example of the British Army in their treatment of our unfortunate brethren. . . . Provide everything necessary for them on the road.''

John Adams argued that humane treatment of prisoners and deep concern for civilian populations not only reflected the American Revolution's highest ideals, they were a moral and strategic requirement. His thoughts on the subject, expressed in a 1777 letter to his wife, might make a profitable read for Dick Cheney and Donald Rumsfeld as we endeavor to win hearts and minds in Iraq. Adams wrote: ''I know of no policy, God is my witness, but this—Piety, Humanity and Honesty are the best Policy. Blasphemy, Cruelty and Villainy have prevailed and may again. But they won't prevail against America, in this Contest, because I find the more of them are employed, the less they succeed.''

Even British military leaders involved in the atrocities recognized their negative effects on the overall war effort. In 1778, Col. Charles Stuart wrote to his father, the Earl of Bute: ''Wherever our armies have marched, wherever they have encamped, every species of barbarity has been executed. We planted an irrevocable hatred wherever we went, which neither time nor measure will be able to eradicate.''

In the end, our founding fathers not only protected our national values, they defeated a militarily superior enemy. Indeed, it was their disciplined adherence to those values that helped them win a hopeless struggle against the best soldiers in Europe.

In accordance with this proud American tradition, President Lincoln instituted the first formal code of conduct for the humane treatment of prisoners of war in 1863. Lincoln's order forbade any form of torture or cruelty, and it became the model for the 1929 Geneva Convention. Dwight Eisenhower made a point to guarantee exemplary treatment to German POWs in WorId War II, and Gen. Douglas McArthur ordered application of the Geneva Convention during the Korean War, even though the U.S. was not yet a signatory. In the Vietnam War, the United States extended the convention's protection to Viet Cong prisoners even though the law did not technically require it.

Today, our president is again challenged to align the conduct of a war with the values of our nation. America's treatment of its prisoners is a test of our faith in our country and the character of our leaders.•

• This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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EXTENSIONS OF REMARKS

WAIVING THE CONDITIONALITY PERTAINING TO FOREIGN MILITARY FINANCING FOR INDONESIA

HON. PATRICK J. KENNEDY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 29, 2005

Mr. KENNEDY of Rhode Island. Mr. Speaker, this past weekend the House of Representatives voted to congratulate the Government of Indonesia and the Free Aceh Movement for their willingness to compromise to end the conflict in Aceh. Indeed, I join with my colleagues in marking this important milestone towards peace.

However, at the same time, I must rise to express my grave concerns about the recent Administration decision to waive conditionality pertaining to Foreign Military Financing for Indonesia (FMF). While Indonesia has made great strides in democratization in recent years, it is unfortunate that the Indonesia military (TNI) continues to tarnish that progress.

As my colleagues know, the Fiscal Year 2006 Foreign Operations, Export Financing, and Related Programs Appropriations Act that was signed into law on November 14 included certain restrictions upon FMF for Indonesia. The legislation required that the Indonesian Government hold members of their military accountable for gross violations of human rights. Congress held FMF contingent upon the Indonesian military's cooperation with civilian judicial activities and international efforts aimed at bringing perpetrators to justice. Furthermore, Congress demonstrated its support for strengthening democratic governance in Indonesia, and required that improved civilian control of the military be demonstrated before FMF could be provided.

Those conditions have not yet been met. However, only two days after the Foreign Operations Appropriation bill was signed into law, and despite the clearly expressed will of Congress on this issue, the Administration unilaterally decided to exercise waiver authority that it was granted in good faith.

The evidence does not support this waiver. At least 15 human rights defenders, including Indonesia's foremost human rights advocate Munir, have been murdered since 2000. No perpetrator has been brought to justice for these crimes. No senior Indonesian officer has been held accountable for crimes against humanity in East Timor in 1999 or before. Today, in West Papua, reports continue to come in of the TNI terrorizing the people of West Papua, even as the military restricts access to the area.

I am deeply disappointed by this action taken by the Administration. It removes the U.S.'s leverage to press for human rights improvement. It undermines our credibility with those who have suffered and seek justice. And it threatens the democratic advances that have been made by the Indonesian people.

I strongly urge the Administration to retract this decision.

TRIBUTE TO RETIRING CLERK OF THE HOUSE JEFF TRANDAHL

HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 29, 2005

Mr. NEY. Mr. Speaker, before we conclude this first session of the 109th Congress, we need to acknowledge the exemplary service of our retiring Clerk of the House, Jeff Trandahl. Before retiring last month, Jeff diligently served this Congress for over 20 years. He began his career in the other body working for Senator James Abdnor from South Dakota, Jeff's home state. Thankfully for those of us who serve in the House, he soon chose to join us on this side of the Capitol, taking a job with Congresswoman Virginia Smith from Nebraska and working on Appropriations Committee matters.

Jeff got his first real experience with House operations working for Congressman Pat Roberts from Kansas who served on the Committee on House Administration.

When the Republicans won the House in 1994, Jeff was promoted to Assistant to the Clerk, and in that capacity was responsible for legislative operations, personnel, and budget. In November 1996, he was appointed Acting Chief Administrative Officer of the House and led a drastic reorganization of that office.

In December 1998 he was made the 32nd Clerk of the House and was elected to four consecutive 2-year terms by the House membership.

For the past 8 years his responsibilities as Clerk have included management of the House Floor operations, legal support for the institution, management of public information and required legal filings, and numerous other duties. Simply put, Jeff was responsible for seeing that the essential tasks that allow this House to operate get carried out.

In addition to his regular duties, he played a pivotal role in numerous historic events including the annual State of the Union address, presidential inaugurations, the response to September 11th, the anthrax attacks, and the national funeral for President Reagan.

Members will always be grateful to him for his extensive efforts to use technology to improve the efficiency of House operations. It truly has made our jobs easier and made the business of the House more accessible and open to the public.

One of the accomplishments of which he is the most proud was the establishment of an office to handle the House's historical, curatorial, and archival needs. Jeff has always had an immense amount of respect for the Institution and he will be remembered for his outstanding service.

While this is a loss to the United States Congress, it is certainly a gain for the National Fish and Wildlife Foundation where Jeff will be Executive Director. I am sure he will approach that job with the same determination and perseverance he has shown in his service here. Jeff has always been the consummate professional, and the House is a better place because of his great record of service here.

We thank him and we will miss him, but we wish him the best of luck in his new endeavors.

NEED FOR GREATER CONGRESSIONAL CIVILITY

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 29, 2005

Mr. MOORE of Kansas. Mr. Speaker, as a founding member of the House Center Aisle Caucus, which seeks to bring greater civility and moderation to the actions of the United States House of Representatives and to the interactions between its Members, I commend to all of my colleagues the recent Providence Journal column authored by Eugene G. Bernardo, II, which I have included in today's CONGRESSIONAL RECORD. Mr. Bernardo's commentary regarding the increasing breakdown of civility in political campaigns is equally applicable to the legislative process at the federal level. As he concludes: "By encouraging us to see as equals even those with whom we disagree vehemently, civility lets us hold the respectful dialogues without which democratic decision-making is impossible."

Mr. Speaker, truer words have never been written. I hope that our colleagues will take them to heart as we face the legislative challenges of the weeks and months to come.

[From the Providence Journal, Nov. 11, 2005]

INCIVILITY BREEDS THREATS TO DEMOCRACY

(By Eugene G. Bernardo II)

In 1982, noted criminologists James Q. Wilson and George Kelling developed the "broken windows" theory of crime. The premise was that when a broken window in a building is left unrepaired, the rest of the windows are soon broken by vandals.

According to Wilson and Kelling, the broken window invites further vandalism by sending a signal that no one is in charge, and that breaking more windows has no undesirable consequences.

The broken window is their metaphor for numerous ways in which behavioral norms can break down in a community. If one person scrawls graffiti on a wall, others will soon be using their spray paint. If one person begins dumping garbage in a vacant lot, other dumpers will follow.

In short, once people begin disregarding the norms that maintain community order, both community and order unravel—sometimes with alarming alacrity.

The broken-windows theory is applicable to the modern-day political campaign.

The campaign for public office should be waged within the marketplace of ideas.

It should entail a wide range of debates about public policy, with the candidates each aiming to persuade the citizenry to accept their viewpoints.

However, what we are seeing within the marketplace of ideas today is a disturbing

growth of incivility that confirms the broken-windows theory. This breakdown of civil norms is not the exclusive failing of either the political left or the right. It spreads across the political spectrum. It is typically carried out, not by the candidates, but by auxiliary groups and other campaigners, who attempt to help their cause by demonizing their opponents.

For example, New Jersey's just-completed race for governor was marred by cross allegations of marital infidelity.

Such examples—unfortunately, there are many more—come from so-called leaders in the marketplace of ideas, all of whom are highly educated and must stand behind their public statements. The Internet, with its easy access and worldwide reach, is a breeding ground for even more degrading incivilities.

This illustrates the first aspect of the broken-windows theory: Once the incivility starts, people will take it as an invitation to join in, and pretty soon there's little limit to the incivility.

A second aspect of the broken-windows theory, however, is also happening.

Wilson and Kelling describe this response when the visible signs of order deteriorate in a neighborhood: ''Many residents will think that crime, especially violent crime, is on the rise, and they will modify their behavior accordingly. They will use the streets less often, and when on the streets will stay apart from their fellows, moving with averted eyes, silent lips, and hurried steps. Don't get involved.''

We see this in the political arena. Many are opting out as civility breaks down in the marketplace of ideas. In the last two presidential elections, fewer than half of eligible voters even bothered to vote; voter participation in national elections is on a 40–year decline. As the atmosphere turns hostile to anything approaching a civil exchange or a real dialogue, citizens depart from the political process and shun their civic responsibility.

This is the real danger of incivility. Our free-breathing, self-governing society requires the oxygen of an open exchange of ideas. It requires a certain level of civility rooted in mutual respect for each other's opinions. However, what we see today is an accelerating competition between the left and the right to see which side can inflict more damage to the other. Increasingly, participants in public debates appear to be exchanging ideas when in fact they are spewing invective.

When behavioral norms break down in a community, the police can restore order.

But when civility breaks down in the marketplace of ideas, the law is generally powerless. Our right to speak freely—indeed, to speak with incivility—is guaranteed by the First Amendment.

If we are to prevail as a free, self-governing people, we must restore civility to public discourse. We have to be responsible. We must govern our tongues and our pens. Whether the incivility occurs on a talk show, in a newspaper column, in political campaign ads, at the office water cooler, or in an Internet chat room, it must be met with active disapproval.

This is not to say that democracy requires consensus; it requires debate, which . presupposes that we have disagreements. But civility demands of us that we not let those disagreements—even during these times of great division between the left and the right—push us into words or acts of sharp offense or violence.

By encouraging us to see as equals even those with whom we disagree vehemently, civility lets us hold the respectful dialogues without which democratic decision-making is impossible.

CONFERENCE REPORT ON H.R. 1815, THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006

SPEECH OF

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Sunday, December 18, 2005

Mr. CONYERS. Mr. Speaker, while I am a strong supporter of the brave men and women who serve in our armed forces, I am deeply opposed to the unnecessary and pernicious last-minute amendment added to this bill by Senators GRAHAM, LEVIN, and KYL. I am also disappointed that the conferees have made further changes to the provision that will only further damage our rule of law and compromise the efforts of our soldiers around the world.

Their amendment, which is now Section 1405 of this bill, may severely curtail the federal court's review of detainees operations in ways that do irreparable damage to our rule of law. The provision also fails unequivocally to condemn torture and abuse, or the erratic and unreliable information that practice yields. These flaws are contrary to the fundamental principles of our legal traditions.

Let me first focus on the torture issue. Never before in America's proud history have we countenanced a system in which there is even a possibility that human liberty might be taken away based on evidence extracted by torture. And it is this refusal to debase ourselves, by resorting to immoral and illegal techniques, that lies at the core of our best and most noble traditions.

We should have made clear beyond doubt in this provision that we do not approve of and we are not willing to tolerate a system that rests on torture today. Even if it were true that there may be some extreme case—say, the infamous ''ticking time-bomb'' scenario—that could vindicate the use of abhorrent physical coercion, that exceptional case would not warrant the use of that evidence—evidence that our intelligence services have told us is very often unreliable—in subsequent judicial proceedings. There is simply no excuse or justification for this omission.

As we try to establish new democracies and the rule of law for Iraq and Afghanistan in place of sanctuaries for terrorists, Congress's failure to condemn and bar abuse is shameful, intolerable, and deeply hypocritical: How can we refuse to practice what we preach to other countries?

Congress must return to this issue as soon as possible and make good the promise of Senator MCCAIN's wise anti-abuse provision; after all standards are important but, as we have learned time and time again, we also need accountability and enforcement.

Time is of the essence because continued torture and abuse hurts our efforts in Iraq and beyond against al Qaeda. The persistent wave of stories about prisoners detained for the wrong reasons, or subjected to inappropriate treatment or abuse while in U.S. custody has inflicted terrible harm on our reputation, and on the efforts by our brave men and women in Iraq to win the hearts and minds campaign. Establishing a meaningful system of accountability for detainee operations is not only a matter of restoring America's honor in the eyes in the world, it is a vital part of our counterterrorism strategy.

Accountability, moreover, cannot be achieved without independent monitoring mechanisms. The rule of law, as events of the past four years have made clear, dies behind closed doors and barbed-wire. Cutting off meaningful judicial supervision of the Guantánamo Naval Base will not restore the military's honor. And turning the federal courts into rubber stamps for decisions generated through the rack and the screw would stain our legal traditions.

As Senator SPECTER powerfully urged, these difficult issues must be assigned to the House and Senate Judiciary Committees for their careful and expert consideration. Senator SPECTER's wise counsel has been repeated in letters from senior members of our armed forces, who have already retired; a bipartisan group of respected former federal judges; the American Bar Association; and a broad cross-section of professors from the legal academy. This wide-ranging opposition indicates how thorny these issues are, and how unwise it is to move so quickly on them.

I am heartened, however, that we have been able to preserve much that is not harmful in this provision. There are some sound ideas embedded in these provisions that we should use when we reconsider these issues.

Central to Congress's aim in this provision is a distinction between those detainees who have already been subject to a Combatant Status Review Tribunal (CSRT) and new detainees who will be subject to a future CSRT procedure that Congress will certify more than six months from now. For those who have already been subject to a CSRT and now challenge either that procedure or the lawfulness of the military commission system, the provision does not affect access to the federal courts.

Through section(h)(2), Congress has crafted a new system of judicial review for cases that will be brought under a new system of CSRTs, to be designed by the Secretary of Defense and reviewed with care by Congress. These appeals from new CSRTs will be heard in the United States Court of Appeals for the District of Columbia Circuit. And even in these new cases, the provision does not alter the now-established ability of attorneys to visit clients at Guantánamo. Attorneys litigating their cases in a circuit court need access to and communication with their client, as recent filings in the Hamdan v. Rumsfeld case show.

But section (h)(2) also circumscribes the new system of review to new cases, which will of necessity arise more than six months from now, when the new CSRT procedures have been promulgated. We have preserved the existing, expansive review role of the federal courts for the habeas petitions filed by those who have already been through a CSRT. So detainees who have already had a CSRT hearing, including those who have pending habeas petitions, will continue to have traditional habeas review.

We also chose in paragraph 3 of subsection (e) not to legislate an abstention rule. For those who have filed challenges to their military commissions, we did not take the extraordinary step of requiring convictions or other exhaustion before they come into federal court. As in Ex Parte Quirin, we have permitted pre-conviction challenge to be brought up to the U.S. Supreme Court. Paragraph 3

simply governs challenges to ''final decisions'' of commissions, and does not impact challenges when they are not brought ''under [that] paragraph.'' See Section 1405 (e)(3)(c),(d).

To be sure, a few provisions are singled out to apply to pending cases, but these are provisions that give those who have filed cases additional rights, instead of taking any rights away. One such provision was added in conference with respect to coerced testimony, Section 1405(b)(2). But that provision does not in any way alter the clear intent of the Congress, which was to grandfather the jurisdiction of existing Guantánamo habeas and mandamus lawsuits under Lindh v. Murphy.

As such, nothing in the legislation alters or impacts the jurisdiction or merits of Hamdan. And, quite obviously, nothing in the legislation constitutes affirmative authorization, or even toleration, for the military commissions at issue in that case. That is the question that the Supreme Court will decide in the coming months. Our mention of commissions simply reflects, but does not endorse, the fact that the lower court in Hamdan held them legal.

This provision attempts to address problems that have occurred in the determinations of the status of people detained by the military at Guantánamo Bay and elsewhere. It recognizes that the CSRT procedures applied in the past were inadequate and must be changed going forward. As the former Chief Judge of the U.S. Foreign Intelligence Surveillance Court found, in In Re Guantánamo Detainee Cases, the past CSRT procedures ''deprive[d] the detainees of sufficient notice of the factual bases for their detention and den[ied] them a fair opportunity to challenge their incarceration,'' and allowed ''reliance on statements possibly obtained through torture or other coercion.'' Her review ''call[ed] into serious question the nature and thoroughness'' of the past CSRT process. The former CSRT procedures were not issued by the Secretary of Defense, were not reported to or approved by Congress, did not provide for final determinations by a civilian official answerable to Congress, did not provide for the consideration of new evidence, and did not address the use of statements possibly obtained through coercion.

To address these problems, this provision requires the Secretary of Defense to issue new CSRT procedures and report those procedures to the appropriate committees of Congress; it requires that going forward the determinations be made by a Designated Civilian Official who is answerable to Congress; it provides for the periodic review of new evidence; it provides for future CSRTs to assess whether statements were derived from coercion and their probative value; and it provides for review in the D.C. Circuit Court of Appeals for these future CSRT determinations.

At the same time, in accordance with our traditions, this amendment does not apply retroactively to revoke the jurisdiction of the courts to consider pending claims invoking the Great Writ of Habeas Corpus challenging past enemy combatant determinations reached without the safeguards this amendment requires for future determinations. The amendment alters the original language introduced by Senator GRAHAM so that those pending cases are not affected by this provision. Accordingly, subsection (h)(1) establishes that generally the provisions of this section, including subsection (e)(1), which affects the substantive rights of parties, apply only as of the date of enactment of this provision in accordance with the Supreme Court's decision in Lindh v. Murphy.

Recognizing the Supreme Court's concerns about judicial independence in cases such as City of Boerne v. Flores and United States v. Morrison, we have underscored that Congress is not attempting to settle any constitutional question that is the proper province of the federal courts. Thus in sections (e)(2)(C)(ii), (e)(3)(D)(ii), and (f), we have made clear, out of an abundance of caution, that we not purport to decide any constitutional question that remains within the proper bailiwick of the federal courts pursuant to Article III of the Constitution. Thus, this provision does not speak to the constitutionality of the military commissions or the old CSRTs. We leave it to the courts to decide these questions.

Daily Digest

HIGHLIGHTS

See Résumé of Congressional Activity.

Senate

Chamber Action

The Senate was not in session today. It will next meet at 12 noon, on Tuesday, January 3, 2006.

Committee Meetings

No committee meetings were held.

House of Representatives

Chamber Action

The House was not in session today. The House will meet at 12 noon on Tuesday, January 3, 2006, for the convening of the Second Session of the One Hundred Ninth Congress.

Committee Meetings

No committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D1337)*

H.R. 797, to amend the Native American Housing Assistance and Self-Determination Act of 1996 and other Acts to improve housing programs for Indians. Signed on December 22, 2005. (Public Law 109–136)

H.R. 3963, to amend the Federal Water Pollution Control Act to extend the authorization of appropriations for Long Island Sound. Signed on December 22, 2005. (Public Law 109–137)

H.R. 4195, to authorize early repayment of obligations to the Bureau of Reclamation within Rogue River Valley Irrigation District or within Medford Irrigation District. Signed on December 22, 2005. (Public Law 109–138)

H.R. 4324, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the predisaster mitigation program. Signed on December 22, 2005. (Public Law 109–139)

H.R. 4436, to provide certain authorities for the Department of State. Signed on December 22, 2005. (Public Law 109–140)

H.R. 4508, to commend the outstanding efforts in response to Hurricane Katrina by members and employees of the Coast Guard, to provide temporary relief to certain persons affected by such hurricane with respect to certain laws administered by the Coast Guard. Signed on December 22, 2005. (Public Law 109–141)

H.J. Res. 38, recognizing Commodore John Barry as the first flag officer of the United States Navy. Signed on December 22, 2005. (Public Law 109–142)

S. 335, to reauthorize the Congressional Award Act. Signed on December 22, 2005. (Public Law 109–143)

S. 467, to extend the applicability of the Terrorism Risk Insurance Act of 2002. Signed on December 22, 2005. (Public Law 109–144)

S. 1047, to require the Secretary of the Treasury to mint coins in commemoration of each of the Nation's past Presidents and their spouses, respectively to improve circulation of the $1 coin, to create a new bullion coin. Signed on December 22, 2005. (Public Law 109–145)

H.R. 358, to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the desegregation of the Little Rock Central High School in Little Rock, Arkansas. Signed on December 22, 2005. (Public Law 109–146)

H.R. 327, to allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation. Signed on December 22, 2005. (Public Law 109–147)

Résumé of Congressional Activity

FIRST SESSION OF THE ONE HUNDRED NINTH CONGRESS

The first table gives a comprehensive résumé of all legislative business transacted by the Senate and House. The second table accounts for all nominations submitted to the Senate by the President for Senate confirmation.

DATA ON LEGISLATIVE ACTIVITY

January 4, 2005 through December 22, 2005

	Senate	*House*	*Total*
Days in session	159	140	..
Time in session	1,222 hrs., 26′	1,067 hrs.	..
Congressional Record:			
Pages of proceedings	14,425	13,189	..
Extensions of Remarks	..	2651	..
Public bills enacted into law	41	106	147
Private bills enacted into law	..	..	..
Bills in conference	18	3	..
Measures passed, total	624	715	1,339
Senate bills	194	51	..
House bills	117	290	..
Senate joint resolutions	2	1	..
House joint resolutions	8	12	..
Senate concurrent resolutions	22	11	..
House concurrent resolutions	41	88	..
Simple resolutions	240	262	..
Measures reported, total	286	334	620
Senate bills	226	5	..
House bills	37	186	..
Senate joint resolutions	2	..	..
House joint resolutions	..	3	..
Senate concurrent resolutions	1	..	..
House concurrent resolutions	..	6	..
Simple resolutions	20	134	..
Special reports	14	10	..
Conference reports	2	20	..
Measures pending on calendar	180	93	..
Measures introduced, total	2,616	5,703	8,319
Bills	2,169	4,653	..
Joint resolutions	27	75	..
Concurrent resolutions	75	330	..
Simple resolutions	345	645	..
Quorum calls	3	2	..
Yea-and-nay votes	366	362	..
Recorded votes	..	307	..
Bills vetoed	..	..	..
Vetoes overridden	..	..	..

* These figures include all measures reported, even if there was no accompanying report. A total of 212 reports have been filed in the Senate, a total of 364 reports have been filed in the House.

DISPOSITION OF EXECUTIVE NOMINATIONS

January 4, 2005 through December 22, 2005

Civilian nominations, totaling 511, disposed of as follows:	
Confirmed	325
Unconfirmed	148
Withdrawn	18
Returned to White House	20
Other Civilian nominations, totaling 2,740, disposed of as follows:	
Confirmed	1,960
Unconfirmed	780
Air Force nominations, totaling 9,860, disposed of as follows:	
Confirmed	9,723
Unconfirmed	100
Returned to White House	37
Army nominations, totaling 8,586, disposed of as follows:	
Confirmed	7,971
Unconfirmed	608
Returned to White House	7
Navy nominations, totaling 4,607, disposed of as follows:	
Confirmed	4,583
Unconfirmed	21
Returned to White House	3
Marine Corps nominations, totaling 1,382, disposed of as follows:	
Confirmed	1,380
Unconfirmed	2

Summary

Total nominations carried over from the First Session	0
Total nominations received this Session	27,686
Total confirmed	25,942
Total unconfirmed	1,659
Total withdrawn	18
Total returned to the White House	67

Next Meeting of the SENATE

12 noon, Tuesday, January 3, 2006

Senate Chamber

Program for Tuesday: Senate will meet in a pro forma session.

Next Meeting of the HOUSE OF REPRESENTATIVES

12 noon, Tuesday, January 3, 2006

House Chamber

Program for Tuesday: The House will meet in a pro forma session.

Extensions of Remarks, as inserted in this issue

HOUSE

Conyers, John, Jr., Mich., E2654
Kennedy, Patrick J., R.I., E2653
Moore, Dennis, Kans., E2653
Ney, Robert W., Ohio, E2653

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