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Calendar No. 123

106TH CONGRESS
1ST SESSION

S. J. RES. 26

Expressing the sense of Congress with respect to the court-martial conviction of the late Rear Admiral Charles Butler McVay, III, and calling upon the President to award a Presidential Unit Citation to the final crew of the U.S.S. INDIANAPOLIS.

IN THE SENATE OF THE UNITED STATES

MAY 25, 1999

Mr. SMITH of New Hampshire (for himself, Mr. FRIST, Mr. BOND, Ms. LANDRIEU, Mr. ROBB, Mr. HAGEL, Mr. BREAUX, Mr. TORRICELLI, Mr. HELMS, Mr. INHOFE, Mr. DURBIN, Mr. EDWARDS, Mrs. BOXER, and Mr. INOUYE) introduced the following joint resolution; which was read the first time

MAY 26, 1999

Read the second time and placed on the calendar

JOINT RESOLUTION

Expressing the sense of Congress with respect to the court-martial conviction of the late Rear Admiral Charles Butler McVay, III, and calling upon the President to award a Presidential Unit Citation to the final crew of the U.S.S. INDIANAPOLIS.

Whereas shortly after midnight on the night of July 30, 1945, during the closing days of World War II, the United States Navy heavy cruiser U.S.S. INDIANAP-

OLIS (CA–35) was torpedoed and sunk by a Japanese submarine;

Whereas of the 1,196 crew members, only 316 survived the attack and subsequent five-day ordeal adrift at sea, the rest dying from battle wounds, drowning, shark attacks, exposure, or lack of food and water, making the sinking of the INDIANAPOLIS the worst sea disaster in United States naval history;

Whereas following the rescue of the surviving crew members, the commanding officer of the INDIANAPOLIS, Captain Charles Butler McVay III, who survived the sinking and the ordeal at sea, was charged with ''suffering a vessel to be hazarded through negligence'' and was convicted by a court-martial of that charge, notwithstanding a great many extenuating circumstances, some of which were not presented at the court-martial trial;

Whereas Captain McVay had an excellent record throughout his naval career before the sinking of the INDIANAPOLIS, beginning with his graduation from the United States Naval Academy in 1919 and including an excellent combat record that included participation in the landings in North Africa and award of the Silver Star for courage under fire earned during the Solomon Islands campaign;

Whereas after assuming command of the INDIANAPOLIS on November 18, 1944, Captain McVay led the ship during her participation in the assaults on Iwo Jima and Okinawa;

Whereas during the latter assault, the INDIANAPOLIS suffered a damaging kamikaze attack which penetrated the ship's hull, but the ship was made seaworthy and skill-

fully returned by Captain McVay and her crew to San Francisco for repairs;

Whereas following completion of those repairs, the INDIANAPOLIS was given the mission of transporting to the island of Tinian vital parts of the atomic bomb which was dropped on Hiroshima, a mission which was completed successfully on July 26, 1945, at a record average speed of 29 knots;

Whereas following the accomplishment of that mission, the INDIANAPOLIS sailed from Tinian to Guam and from there embarked for Leyte Gulf in the Philippines to join training with the fleet assembling for the final assault on the Japanese mainland;

Whereas as the INDIANAPOLIS began its trip across the Philippine Sea on July 28, 1945, the war was virtually over in that area of the south Pacific, with hostilities having moved 1,000 miles to the north, the Japanese navy's surface fleet was nonexistent, and United States naval intelligence reported only four operational Japanese submarines in the entire Pacific theater of war, all of which resulted in the state of alert among shore-based personnel routing and tracking the INDIANAPOLIS across the Philippine Sea being affected accordingly;

Whereas before departure from Guam Captain McVay requested a destroyer escort because his ship was not equipped with antisubmarine detection devices, but, despite the fact that no capital ship such as the INDIANAPOLIS had made the transit between Guam and the Philippines without escort during World War II, that request was denied, and a 1996 report by the Navy's Judge Advocate General's office concedes that ''Captain McVay and the routing officer did not discuss the availability of

an escort after the operations officer for COMMARIANNAS confirmed that an escort was not necessary'';

Whereas although Captain McVay was informed of ''submarine sightings'' in the Philippine Sea, such sightings were commonplace, and none of those reported to Captain McVay had been confirmed, and at the same time there was a failure to inform him that a submarine within range of his path had sunk the U.S.S. UNDERHILL four days before his departure from Guam;

Whereas United States military intelligence activities, through a code-breaking system called ULTRA, had learned that the Japanese submarine I–58 was operating in the Philippine Sea area, but Captain McVay was not told of this intelligence, which remained classified as Top Secret until the early 1990's, and this intelligence (and the fact that it was withheld from Captain McVay when he sailed from Guam) was not brought to light at his court-martial;

Whereas the INDIANAPOLIS was sunk by this same submarine;

Whereas the commander of that submarine, Mochitsura Hashimoto, testified at the court-martial that once he had detected the ship, he would have been able to make a successful torpedo attack whether or not the ship was zigzagging;

Whereas with visibility severely limited by a heavy overcast at approximately 11 p.m. on the night of July 29, 1945, Captain McVay gave the order to cease zigzagging and retired to his cabin and shortly after midnight the INDI-

ANAPOLIS was struck by two torpedoes and sunk within 12 minutes;

Whereas the formal charge upon which Captain McVay was convicted for ''suffering a vessel to be hazarded through negligence'' contained the phrase ''in good visibility'' in reference to the weather conditions on that night, which is contrary to the recollection of all survivors, who recall that the visibility was very poor;

Whereas after the INDIANAPOLIS was sunk, various Navy shore offices compounded the previous errors which had led to the ship being placed in jeopardy by failing to report the ship's overdue arrival, thus leaving the approximately 950 members of the crew who survived the sinking of the ship adrift for four days and five nights until by chance the survivors were spotted by a routine air patrol;

Whereas a court of inquiry to investigate the sinking was convened in Guam on August 13, 1945, just two weeks after the sinking and nine days after the survivors were rescued (a date so soon after the sinking that Captain William Hillbert, the Navy judge advocate for the inquiry, admitted that the inquiry was so rushed that they were ''. . . starting the proceedings without having available all the necessary data'') and recommended that Captain McVay be issued a Letter of Reprimand and that he be court-martialed;

Whereas the headquarters staff of CINCPAC (commanded by Fleet Admiral Chester Nimitz) disagreed with the recommendation of the court of inquiry, stating that in not maintaining a zigzag course Captain McVay at worst was guilty only of an error in judgment and not gross negligence and concluded that the rule requiring zigzagging

would not have applied in any event since Captain McVay's orders gave him discretion on that matter and took precedence over all other orders (a point that was never made by Captain McVay's attorney during the court-martial);

Whereas the Department of the Navy delayed the announcement of the sinking of the INDIANAPOLIS for almost two weeks to coincide with the announcement of the surrender of Japan, thus diverting attention from the magnitude of the disaster and lessening its public impact, and then, despite opposition by Admiral Nimitz and Admiral Raymond Spruance (for whom the INDIANAPOLIS had served as flagship), it brought court-martial charges against Captain McVay in a rare instance when a commanding officer's recommendations are contravened;

Whereas Captain McVay thus became the first United States Navy commanding officer brought to trial for losing his ship in combat during World War II, despite the fact that over 700 ships were lost during World War II, including some under questionable circumstances;

Whereas Captain McVay was convicted on February 23, 1946, on the charge of ''suffering a vessel to be hazarded through negligence'', thus permanently damaging his career as a naval officer, although when Admiral Nimitz was advanced to the position of Chief of Naval Operations later that same year, he remitted Captain McVay's sentence and restored him to active duty;

Whereas following his court-martial conviction, Captain McVay remained on active duty until retiring in 1949 upon completion of 30 years of active naval service, with a final promotion, in accordance with then-applicable law,

to the grade of rear admiral, effective upon the date of his retirement;

Whereas Rear Admiral Charles Butler McVay III (retired), died on November 6, 1968, without having been exonerated from responsibility for the loss of his ship and the lives of 880 members of her crew;

Whereas the survivors of the INDIANAPOLIS still living have remained steadfast in their support of the exoneration of Captain McVay;

Whereas in 1993, Congress, in section 1165 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1765; 16 U.S.C. 431 note), recognized the memorial to the U.S.S. INDIANAPOLIS (CA–35) in Indianapolis, Indiana, as the national memorial to that historic warship and to her final crew; and

Whereas in 1994, Congress, in section 1052 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2844), stating that it was acting on behalf of the grateful people of the United States (1) recognized the invaluable contributions of the U.S.S. INDIANAPOLIS to the ending of World War II, and (2) on the occasion of the 50th anniversary of her tragic sinking, and the dedication of the national memorial in Indianapolis on July 30, 1995, commended that ship and her crew for selfless and heroic service to the United States: Now, therefore, be it

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*,

SECTION 1. SENSE OF CONGRESS CONCERNING THE COURT-MARTIAL CONVICTION OF CHARLES BUTLER MCVAY, III.

It is the sense of Congress that—

(1) the court-martial charges against then-Captain Charles Butler McVay III, United States Navy, arising from the sinking of the U.S.S. INDIANAPOLIS (CA–35) on July 30, 1945, while under his command were not morally sustainable;

(2) Captain McVay's conviction was a miscarriage of justice that led to his unjust humiliation and damage to his naval career; and

(3) the American people should now recognize Captain McVay's lack of culpability for the tragic loss of the U.S.S. INDIANAPOLIS and the lives of the men who died as a result of her sinking.

SEC. 2. SENSE OF CONGRESS CONCERNING PRESIDENTIAL UNIT CITATION FOR FINAL CREW OF THE U.S.S. INDIANAPOLIS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the President should award a Presidential Unit Citation to the final crew of the U.S.S. INDIANAPOLIS (CA–35) in recognition of the courage and fortitude displayed by the members of that crew in the face of tremendous hardship and adversity after their ship was torpedoed and sunk on July 30, 1945.

(b) WAIVER OF TIME LIMITATION.—A citation described in subsection (a) may be awarded without regard to any provision of law or regulation prescribing a time limitation that is otherwise applicable with respect to recommendation for, or the award of, such a citation.

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