

to gut our long-standing laws. That Bybee memo was the law of the land, effectively, in the CIA and the Department of Defense for 2½ years. We saw what the results were. The McCain amendment would make sure that will not happen again.

Our political leaders made deliberate decisions to throw out the well-established legal framework that has long made America the gold standard for human rights throughout the world. The administration left our soldiers, case officers, and intelligence agents in a fog of ambiguity. They were told to “take the gloves off” without knowing what the limits were, and the consequences were foreseeable.

In rewriting our human rights laws, the administration consistently overruled the objections of experienced military personnel and diplomats. The Secretary of State, Colin Powell, warned the White House:

It will reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our [own] troops.

Senior Defense officials were warned that changing the rules could lead to so-called “force drift”, in which, without clearer guidance, the level of force applied to an uncooperative detainee might well result in torture.

William Taft, the State Department Legal Advisor in President Bush’s first term, recently called it a source of amazement and disappointment that the Justice Department severely limited the applicability of the Geneva Conventions to the detainees. In an address at American University, he said the decision to do so:

unhinged those responsible for the treatment of the detainees . . . from the legal guidelines for interrogation . . . embodied in the Army Field Manual for decades. Set adrift in uncharted waters and under pressure from their leaders to develop information on the plans and practices of al Qaeda, it was predictable that those managing the interrogation would eventually go too far.

And they did.

The Judge Advocates General echoed Mr. Taft’s concerns. On July 14, 2005, the JAGs appeared before the Senate Armed Services Committee’s Subcommittee on Personnel. In response to questioning by my friend Senator GRAHAM, the witnesses acknowledged that the Justice Department’s policy embodied in the Bybee torture memorandum’s definition of torture was a violation of international and domestic law and alarmed the Judge Advocates General who reviewed it.

Their alarm was well founded because their concerns were overruled by General Counsel William Haynes, who issued the Defense Department’s April 2003 Working Group Report. The report twisted and diluted the definition of “torture,” claimed that military personnel who commit torture may invoke the defenses of “necessity” and “superior orders,” and advised military personnel that they are not obligated to comply with the Federal prohibition on torture.

Senator GRAHAM himself accurately assessed the impact of the civilian authorities when he told the JAG officers at the hearing: I think it is fair to say that the Department of Defense was secondary to the Department of Justice in a political sense, and that was our problem. If they had listened from the outset, we wouldn’t have had a lot of the problems that we have had to deal with in the past.

The President is not an emperor or a king. His administration is not above the law or accountability, and he is certainly not infallible.

The single greatest criticism of this administration’s detention and interrogation policies is that it failed to respect history, the collective wisdom of our career military and State Department officials, and that it holds far too expansive a view of executive authority. In short, the White House suffers from the arrogance of thinking they knew best and abandoning the long-standing rules.

As Captain Fishback wrote:

We owe our soldiers better than this. Give them a clear standard that is in accordance with the bedrock principles of our nation.

We are America, and our actions should be held to a higher standard, the ideals expressed in documents such as the Declaration of Independence and the Constitution.

The McCain amendment takes a strong step forward to giving our troops that standard. I hope it is supported. Madam President, I ask unanimous consent that Captain Fishback’s letter, which was published in the Washington Post, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEAR SENATOR MCCAIN: I am a graduate of West Point currently serving as a Captain in the U.S. Army Infantry. I have served two combat tours with the 82nd Airborne Division, one each in Afghanistan and Iraq. While I served in the Global War on Terror, the actions and statements of my leadership led me to believe that United States policy did not require application of the Geneva Conventions in Afghanistan or Iraq. On 7 May 2004, Secretary of Defense Rumsfeld’s testimony that the United States followed the Geneva Conventions in Iraq and the “spirit” of the Geneva Conventions in Afghanistan prompted me to begin an approach for clarification. For 17 months, I tried to determine what specific standards governed the treatment of detainees by consulting my chain of command through battalion commander, multiple JAG lawyers, multiple Democrat and Republican Congressmen and their aides, the Ft. Bragg Inspector General’s office, multiple government reports, the Secretary of the Army and multiple general officers, a professional interrogator at Guantanamo Bay, the deputy head of the department at West Point responsible for teaching Just War Theory and Law of Land Warfare, and numerous peers who I regard as honorable and intelligent men.

Instead of resolving my concerns, the approach for clarification process leaves me deeply troubled. Despite my efforts, I have been unable to get clear, consistent answers from my leadership about what constitutes lawful and humane treatment of detainees. I certain that this confusion contributed to a

wide range of abuses including death threats, beatings, broken bones, murder, exposure to elements, extreme forced physical exertion, hostage-taking, stripping, sleep deprivation and degrading treatment. I and troops under my command witnessed some of these abuses in both Afghanistan and Iraq.

This is a tragedy. I can remember, as a cadet at West Point, resolving to ensure that my men would never commit a dishonorable act; that I would protect them from that type of burden. It absolutely breaks my heart that I have failed some of them in this regard.

That is in the past and there is nothing we can do about it now. But, we can learn from our mistakes and ensure that this does not happen again. Take a major step in that direction; eliminate the confusion. My approach for clarification provides clear evidence that confusion over standards was a major contributor to the prisoner abuse. We owe our soldiers better than this. Give them a clear standard that is in accordance with the bedrock principles of our nation.

Some do not see the need for this work. Some argue that since our actions are not as horrifying as Al Qaeda’s, we should not be concerned. When did Al Qaeda become any type of standard by which we measure the morality of the United States? We are America, and our actions should be held to a higher standard, the ideals expressed in documents such as the Declaration of Independence and the Constitution.

Others argue that clear standards will limit the President’s ability to wage the War on Terror. Since clear standards only limit interrogation techniques, it is reasonable for me to assume that supporters of this argument desire to use coercion to acquire information from detainees. This is morally inconsistent with the Constitution and justice in war. It is unacceptable.

Both of these arguments stem from the larger question, the most important question that this generation will answer. Do we sacrifice our ideals in order to preserve security? Terrorism inspires fear and suppresses ideals like freedom and individual rights. Overcoming the fear posed by terrorist threats is a tremendous test of our courage. Will we confront danger and adversity in order to preserve our ideals, or will our courage and commitment to individual rights wither at the prospect of sacrifice? My response is simple. If we abandon our ideals in the face of adversity and aggression, then those ideals were never really in our possession. I would rather die fighting than give up even the smallest part of the idea that is “America.”

Once again, I strongly urge you to do justice to your men and women in uniform. Give them clear standards of conduct that reflect the ideals they risk their lives for.

With the Utmost Respect,

CAPT. IAN FISHBACK,
82nd Airborne Division,
Fort Bragg, North Carolina.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold?

Mr. KENNEDY. I withhold my suggestion.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:29 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. SUNUNU).

Mr. SMITH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006—Continued

Mr. STEVENS. Mr. President, I have a package we have approved as managers of the bill. I ask unanimous consent that the Chair lay before the Senate amendments 1996, 1887, 1895, 2017, 1925, and 1889. It sounds as though I am reading birthdays.

When the Chair is ready, I will proound a unanimous consent request when those amendments are before us.

The PRESIDING OFFICER. Is there objection to considering the amendments en bloc?

Mr. STEVENS. We do not want to offer them en bloc. We want to offer them one by one.

The PRESIDING OFFICER. The clerk will report.

AMENDMENT NO. 1996

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Ms. MIKULSKI, proposes an amendment numbered 1996.

The amendment is as follows:

(Purpose: To provide that, of the amount made available under title III for the Navy for other procurement, up to \$3,000,000 may be made available for the Joint Aviation Technical Data Integration Program)

On page 220, after line 25, add the following:

SEC. 8116. Of the amount appropriated by title III under the heading “OTHER PROCUREMENT, NAVY”, up to \$3,000,000 may be made available for the Joint Aviation Technical Data Integration Program.

Mr. STEVENS. I send a modification to the desk.

The PRESIDING OFFICER. Is there objection to the modification?

Without objection, the amendment is so modified.

The amendment (No. 1996), as modified, is as follows:

On page 220, after line 25, add the following:

SEC. 8116. Of the amount appropriated by title III under the heading “OTHER PROCUREMENT, NAVY”, up to \$3,000,000 may be made available for the Joint Aviation Technical Data Integration Program.

Mr. STEVENS. Mr. President, this is an amendment offered by Senator MIKULSKI for the Joint Aviation Technical Data Integration Program.

Mr. INOUE. No objections.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Is there further debate on the amendment? The

question is on agreeing to amendment No. 1996, as modified.

The amendment (No. 1996), as modified, was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. INOUE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1887

Mr. STEVENS. I call up amendment No. 1887.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. SALAZAR, proposes an amendment numbered 1887.

The amendment is as follows:

(Purpose: To rename the death gratuity payable for deaths of members of the Armed Forces as fallen hero compensation)

At the appropriate place, insert the following:

SEC. _____. (a) RENAMING OF DEATH GRATUITY PAYABLE FOR DEATHS OF MEMBERS OF THE ARMED FORCES.—Subchapter II of chapter 75 of title 10, United States Code, is amended as follows:

(1) In section 1475(a), by striking “have a death gratuity paid” and inserting “have fallen hero compensation paid”.

(2) In section 1476(a)—

(A) in paragraph (1), by striking “a death gratuity” and inserting “fallen hero compensation”; and

(B) in paragraph (2), by striking “A death gratuity” and inserting “Fallen hero compensation”.

(3) In section 1477(a), by striking “A death gratuity” and inserting “Fallen hero compensation”.

(4) In section 1478(a), by striking “The death gratuity” and inserting “The amount of fallen hero compensation”.

(5) In section 1479(1), by striking “the death gratuity” and inserting “fallen hero compensation”.

(6) In section 1489—

(A) in subsection (a), by striking “a gratuity” in the matter preceding paragraph (1) and inserting “fallen hero compensation”; and

(B) in subsection (b)(2), by inserting “or other assistance” after “lesser death gratuity”.

(b) CLERICAL AMENDMENTS.—

(1) Such subchapter is further amended by striking “Death Gratuity;” each place it appears in the heading of sections 1475 through 1480 and 1489 and inserting “Fallen Hero Compensation;”.

(2) The table of sections at the beginning of such subchapter is amended by striking “Death gratuity;” in the items relating to sections 1474 through 1480 and 1489 and inserting “Fallen hero compensation;”.

(c) GENERAL REFERENCES.—Any reference to a death gratuity payable under subchapter II of chapter 75 of title 10, United States Code, in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to fallen hero compensation payable under such subchapter, as amended by this section.

Mr. STEVENS. This is Senator SALAZAR’s fallen hero compensation amendment, which we have agreed to.

Mr. INOUE. We support it.

The PRESIDING OFFICER. Is there further debate on the amendment? If

not, the question is on agreeing to amendment No. 1887.

The amendment (No. 1887) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. INOUE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1895

Mr. STEVENS. I call up amendment No. 1895.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. BINGAMAN, for himself and Mr. DOMENICI, proposes an amendment numbered 1895.

The amendment is as follows:

(Purpose: To make available \$3,000,000 from Research, Development, Test, and Evaluation, Air Force, for assurance for the Field Programmable Gate Array)

At the appropriate place, insert the following:

SEC. _____. Of the amount appropriated by title IV under the heading “RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE”, up to \$3,000,000 may be used for research and development on the reliability of field programmable gate arrays for space applications.

Mr. STEVENS. This is Senator BINGAMAN’s amendment for field programmable gate array. I have a modification which I send to the desk.

The PRESIDING OFFICER. Is there objection to the modification? If not, the amendment is so modified.

The amendment (No. 1895), as modified, is as follows:

At the appropriate place, insert the following:

SEC. _____. Of the amount appropriated by title IV under the heading “RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE”, up to \$3,000,000 may be used for research and development on the reliability of field programmable gate arrays for space applications.

Mr. STEVENS. I ask for approval of the amendment.

Mr. INOUE. No objection.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 1895, as modified.

The amendment (No. 1895), as modified, was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. INOUE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2017

Mr. STEVENS. I call up amendment No. 2017 and send a modification to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. BENNETT, proposes an amendment numbered 2017.