

controls and quality assurance mechanism.

All Americans have a role to play in honoring veterans. Ordinary citizens give in extraordinary ways, such as volunteering at VA hospitals and VA shelters, and supporting local Veterans Service Organizations. For those of us who serve in Congress, we have a special privilege and responsibility to honor veterans by ensuring that they receive the benefits and care they have earned through service. This Congress has done much for veterans already, but there is more to be done.

The Committee on Veterans' Affairs will continue to do its share throughout this Congress. To name just two items of pending business, we will hold a markup tomorrow on pending legislation, including a bill that is designed to improve significantly VA's programs which address the mental health needs of veterans, especially those recently returned from combat, and second, the Committee is preparing to consider the nomination of Dr. James Peake to become Secretary of Veterans Affairs.

I close with this thought: On the battlefield, one never leaves behind a fallen comrade. Similarly, veterans should never be left behind by a system designed to care for and honor them. We cannot stand by while veterans who have fought for our country have to fight to get the care and benefits they have earned through their service. The Committee on Veterans' Affairs will respond to whatever challenges may arise in our work on behalf of those who rose up to defend and serve our Nation. To our veterans: Our thoughts, prayers, gratitude, honor and pride are with you, not only on Veterans Day, but always.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, at 12:28 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER.)

The PRESIDING OFFICER. Who seeks recognition?

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REED. Mr. President, I ask unanimous consent to speak for up to 10 minutes in morning business.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. REED. Thank you, Mr. President.

#### NOMINATION OF MICHAEL MUKASEY

Mr. REED. Mr. President, last week, this Senate deliberated and voted on the nomination of Judge Mukasey for the position of Attorney General of the United States. I opposed that nomination, and I believe it is appropriate to indicate formally and officially and publicly my concerns and my rationale for this vote.

This was not a decision that was made lightly. The Constitution gives the President the unfettered right to submit nominees to the Senate, but the Constitution also gives the Senate not only the right but the obligation to provide advice and consent on such nominations.

We do not name a President's Cabinet, but it does not mean we are merely rubberstamps for his proposals. Senatorial consent must rest on a careful review of a nominee's record and a thoughtful analysis of a nominee's ability to serve not just the President but the American people.

As I have said in the past, unlike other Cabinet positions, the Attorney General has a very special role—decisively poised at the juncture between the executive branch and the judicial branch. In addition to being a member of the President's Cabinet, the Attorney General is also an officer of the Federal courts and the chief enforcer of laws enacted by Congress.

He is, in effect, the people's lawyer, responsible for fully, fairly, and vigorously enforcing our Nation's laws and the Constitution for the good of all Americans.

Although I believe Judge Mukasey to be an intellectually gifted and legally skilled individual, I am very concerned about his ability to not just enforce the letter of the law but also to recognize and to carry out the true spirit of the law.

Frankly, I found Judge Mukasey's lawyerly responses to questions regarding the legality of various interrogation techniques, in particular waterboarding, evasive and, frankly, disturbing.

Waterboarding is not a new technique, and it is clearly illegal. As four former Judge Advocates General of the military services recently wrote to Senator LEAHY, in their words:

In the course of the Senate Judiciary Committee's consideration of President Bush's nominee for the post of Attorney General, there has been much discussion, but little clarity, about the legality of "waterboarding" under United States and international law. We write because this issue above all demands clarity: Waterboarding is inhumane, it is torture, and it is illegal.

These gentlemen have devoted themselves to their country, as soldiers and sailors and aviators, and also as attorneys. At the crux of their service was the realization that what we espoused, what we stood for, would also be the standard we would claim for American soldiers and aviators and sailors and

marines if they were in the hands of hostile forces. It is clear in their eyes—and should be clear in our eyes—that waterboarding is inhumane, it is torture, and it is illegal.

It is illegal under the Geneva Conventions, under U.S. laws, and the Army Field Manual. The U.S. Government has repeatedly condemned the use of water torture and has severely punished those who have applied it against our forces.

As Evan Wallach—a judge in the U.S. Court of International Trade and a former JAG who trained soldiers on their legal obligations—wrote in an opinion piece in the Washington Post, it was for such activities as waterboarding that members of Japan's military and Government elite were convicted of torture in the Tokyo war crimes trials.

The law is clear about this horrifying interrogation technique. Waterboarding is illegal torture and, to suggest otherwise, damages the very fabric of international principle and more importantly, of what we would claim and demand for our own soldiers and sailors and marines.

Now, Judge Mukasey was given several opportunities to clearly state that waterboarding is illegal. Instead, he went through a lengthy legal analysis regarding how he might determine if a certain interrogation technique was legal and then told us that if Congress actually wrote a law stating that a particular technique is illegal, he would follow the law. I found the last declaration almost nonsensical. This is the minimum requirement we would expect of any citizen of this country, that if we passed a law, they would follow the law.

I think we expect much more from the Attorney General. We expect him to be a moral compass as well as a wise legal advisor. We expect he would be able to conclude, as these other experts and as our history has shown, that this technique is indeed illegal. We need an Attorney General who has the ability to both lead the Department of Justice and to tell the President when he is crossing his boundaries. We do not need a legal enabler to the President. We need an Attorney General who will stand up for his obligation to the Constitution, and make this his foremost obligation, rather than his obligation to the President.

Not definitively stating that a technique such as waterboarding is illegal demonstrates to me that Judge Mukasey does not have those qualities we need in an Attorney General. As we learned from Attorney General Gonzales, we need someone who is willing to stand up to the President instead of helping the President negotiate around either the letter or the spirit of the Constitution.

This is not just an academic exercise. If the question of whether waterboarding is illegal torture was asked of the parents of American soldiers, their answer would be quite

clear: Of course, it is. If it was applied to the spouse or the loved one of a soldier—their answer would be: Of course, it is. I think those people are as expert as Judge Mukasey and certainly much more candid.

I also think we have risked a great deal in the administration's embrace of these techniques because today, as we look around the world, there are many nations that do not even need that kind of suggestion to embark on the torture of their own citizens. The Burmas of the world and other countries, they will use what we say and do as justification for what they might want to do. I think we have lost the moral high ground during this whole exercise going back several years.

Finally, I would like to mention my concerns about Judge Mukasey's responses to questions regarding executive power. His responses to these questions did nothing to reassure me. In fact, I now believe that Judge Mukasey believes that even a constitutional statute could become unconstitutional if its application constrains the so-called constitutional authority of the President.

As we all know, the genius of our Founding Fathers was not to allow power to be concentrated in the hands of the few. Indeed, they were particularly concerned about a concentration of power in the hands of the President.

Although they made the President the Chief Executive Officer of our Government and the Commander in Chief, the Founding Fathers constrained the President through the very structure of our Government, through both law and treaty. The Attorney General has a duty not just to serve the President but also to support, protect, and defend the Constitution.

I did not vote in support of Alberto Gonzales's nomination to be Attorney General because I was concerned about his ability to serve more than the President—a concern that has been borne out by the events over the last several months. It is largely because of his actions we are in the quandary we are in today with respect to torture and so many other issues.

Instead of protecting our Nation's Constitution and upholding our laws, he engaged in actions that damaged our Nation's core values and put our citizens' rights at risk both here and abroad.

Given the extreme politicization of the Department of Justice, and the demoralization that has followed in his wake, I believe our Nation needs an Attorney General who can help lead us like a beacon of light and help right our country's moral compass as an example again for the rest of the world.

I do not think Judge Mukasey met that standard.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, what is the pending legislation?

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

### FARM, NUTRITION, AND BIOENERGY ACT OF 2007—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 2419) to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

#### Pending:

Harkin amendment No. 3500, in the nature of a substitute.

Reid (for Dorgan-Grassley) amendment No. 3508 (to amendment No. 3500), to strengthen payment limitations and direct the savings to increased funding for certain programs.

Reid amendment No. 3509 (to amendment No. 3508), to change the enactment date.

Reid amendment No. 3510 (to the language proposed to be stricken by amendment No. 3500), to change the enactment date.

Reid amendment No. 3511 (to amendment No. 3510), to change the enactment date.

Motion to commit the bill to the Committee on Agriculture, Nutrition, and Forestry, with instructions to report back forthwith, with Reid amendment No. 3512.

Reid amendment No. 3512 (to the instructions of the motion to commit to the Committee on Agriculture, Nutrition, and Forestry, with instructions), to change the enactment date.

Reid amendment No. 3513 (to the instructions of the motion to recommit), to change the enactment date.

Reid amendment No. 3514 (to amendment No. 3513), to change the enactment date.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Thank you, Mr. President.

We have the farm bill before us. We have been trying for a week to do amendments on the bill. The Republicans have said that because this bill is being handled in such an unusual procedural way, they are not going to let us move forward on this bill.

This bill is being handled similar to every farm bill in the last 30 years. In that entire period, there has only been one time that a nongermane amendment was offered, and that was on the last farm bill when Senator KYL offered an amendment dealing with the estate tax. It was a sense-of-the-Senate resolution. That is it.

So for the minority to cry about this is simply that they are crying about something there is no reason to cry about. We want to move this bill. I had a conversation this morning right over here on the floor with the distinguished Republican leader and the ranking member of the committee, SAXBY CHAMBLISS. At that time, as I understood the conversation, the Republicans had 10 amendments they wanted to do. Let's look at them. We have some we want to do. Let's pare them off, set very short time limits on them, and move this bill.

This is an important bill. If this bill does not move forward—a bill that is being treated similar to every other

farm bill in recent history—the reason it is not going forward is the Republicans. If they do not want a farm bill, why don't they say so. They can explain to all the farm organizations around the country that they did not want a farm bill, they wanted us to extend what is now in existence. If that is what they want, why don't they say so?

It is unfortunate we have been unable to move forward on these amendments. The first amendment pending is a bipartisan amendment offered by Senator DORGAN. It is a good amendment. It is one that should be debated and voted on. Another amendment is a complete substitute—that is my understanding—and Senator LUGAR and Senator LAUTENBERG want to do that amendment. Let's debate it, find out what the will of the Senate is, and move on. But to be in this position is really unfair to farm State Senators, to farmers and ranchers, to the Senate, and to our country. If you are unwilling to fight, just say so. If you don't want this bill to come forward, just tell us that. Don't play these games that they are not treating us right procedurally. This is the way this bill is always handled.

So I just think it is something we need to do. It is an important piece of legislation. The committee, on a bipartisan basis, reported this bill out with an overwhelming vote. This is not a Democratic bill; it is a bill reported out by the Agriculture Committee on a bipartisan basis. So I hope this afternoon we can get some work done on the farm bill.

Mr. HARKIN. Will the leader yield?

Mr. REID. I am happy to yield to my friend, the chairman of the Agriculture Committee.

Mr. HARKIN. I thank our majority leader for all the support he has given us in getting this bill through even when we worked in committee and working with the Finance Committee to make sure we had the necessary money to meet our obligations and bringing it to the floor in a timely manner. We had all last week; we couldn't get anything done. We have this week before we go home for the Thanksgiving break. We could finish this bill, I say to our leader, we could finish this bill if we could just get the other side to agree to start the process.

We have an amendment, I say to the leader, before us which we could debate. We could even put a time limit on it. We have another amendment on which we could put a time limit. We could get two or three or four amendments done today. But, I say to the leader, I am very frustrated that we have the farm bill out here, we are ready to go—we have been ready for some time—there are amendments filed, and we would like to get started on it, but we can't until the minority leader agrees to move ahead and says we can bring up some of these amendments and move ahead on them. I just hope we don't waste another whole day.