

House arrived over here with 377 votes. This is a bipartisan bill. It is something we need to do. We need to do it as quickly as possible.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business until 3:30 p.m., with Senators permitted to speak for up to 10 minutes each.

The Senator from Tennessee.

WISHING SENATOR JIM JEFFORDS HAPPY BIRTHDAY

Mr. ALEXANDER. Mr. President, I would like to join the majority leader in wishing happy birthday to Jim Jeffords. Jim is a friend of all of ours. I see the Senator from Arizona in the Chamber. We all served together. I served with Senator Jeffords when I was Education Secretary and he was ranking member of the Education Committee. We all know his deep concern for education, especially for children with disabilities. We wish him the very best on his 75th birthday.

INVESTIGATING INTERROGATION TACTICS

Mr. ALEXANDER. Mr. President, even though President Obama has said we should look forward, some in Congress insist on looking backward to a broader investigation of interrogation tactics that were used against 9/11 terrorists to find out whether even more airplanes were on their way to kill even more Americans.

These interrogation tactics are now well known. They had been approved by the National Security Council, approved by the Department of Justice, were known to senior Democratic and Republican Members of Congress who, CIA records now show, were briefed some 40 times. The CIA has not used the tactics in question for several years. They are not being used today. The Congress has since enacted laws that make clear that interrogation tactics used by the military are limited to those contained in the Army Field Manual. The President extended those same limitations to intelligence agencies this year by Executive order.

The President is following his own advice about looking forward by asking the National Security Council to review what tactics would be appropriate when terrorists are captured who might have information about imminent attacks on Americans. The Senate Intelligence Committee is conducting its own review of tactics and is considering expanding the briefing process for interrogation tactics.

Despite these investigations, some still say, let's have "a full-blown criminal" investigation.

That raises these questions: Investigation of whom? Where do we draw the line? Where is the logical place to stop?

On Thursday, I asked these questions of the Attorney General, Eric Holder, at a Senate Appropriations Committee hearing. He found it difficult to give me specific answers.

To begin with, the Attorney General did not answer my question about what directions he had received from the White House concerning interrogations.

Then, he would only answer "hypothetically" when I asked if we are going to investigate lawyers for giving their opinions, shouldn't we also investigate intelligence agents who created the interrogation techniques and asked for the opinions, or officials who approved the techniques, or Members of Congress who knew about or approved or even encouraged the interrogation tactics?

The Attorney General could not remember whether he knew or approved of renditions that occurred during the Clinton administration when he was Deputy Attorney General—renditions that took captured terrorists to other countries, for example, perhaps to Egypt, for custody, maybe for interrogation. He did not say what precautions he took to make sure these renditions followed the law.

The Attorney General's unresponsive answers and poor memory suggest what a difficult path it will be if the Government continues to publicize and expand its investigation of interrogation tactics.

This is not a pleasant subject. When we debated it in the Senate in 2005, I was among those Senators, including Senator MCCAIN, who disagreed with the administration. We believed it was Congress's constitutional responsibility to set the rules for dealing with detainees and we helped enact a law requiring that techniques used by the military should be limited to those in the Army Field Manual. But showing videotapes of even those techniques will not be a pretty sight.

Public officials, of course, should follow the law. But it is not necessary to have a circus to determine whether the law was followed.

If there is to be a broader investigation than currently is underway, it must be fair and evenhanded and lead wherever it may lead—perhaps to intelligence officers, perhaps to administration officials, perhaps to Members of Congress. The Attorney General himself needs to be willing to say what he knew and when he knew it and what he did about renditions during the Clinton administration when he was Deputy Attorney General.

Obsessively looking in the rear view mirror could consume our Nation's every waking moment. There is plenty about America's history that, in retro-

spect, we wish had not happened: Supreme Court decisions barring Blacks from public facilities, Congress filibustering anti-lynching laws, excluding Jews from major institutions, denying women the right to vote, incarcerating Japanese Americans during World War II.

We have dealt with those instances best by acknowledging and correcting them, not wallowing in them by recognizing that the United States has always been a work in progress toward great goals, rarely achieving them, often falling back, but always trying. In fact, the late political scientist Samuel Huntington has written that most of our political debates are about dealing with the disappointment of not meeting great goals we have set for ourselves.

Then there is the thoroughly practical question of who will want to serve in public life in Washington, DC, if the first thing a newly elected administration does is to try to discredit, disbar, or indict all those with whom it disagrees in the last administration. Some of that damage already has been done.

For all these reasons, I would hope the President will follow his first instinct and insist that we go forward as a country—focus on the economy, on the banks and the auto companies, on health care and energy, on a Supreme Court Justice, and two wars in which our men and women are serving.

Mr. President, I ask unanimous consent to have printed in the RECORD the questions I asked Attorney General Holder on Thursday, along with his answers.

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

ALEXANDER-HOLDER EXCHANGE ON INVESTIGATION OF INTERROGATION TACTICS

HEARING OF THE APPROPRIATIONS SUBCOMMITTEE ON COMMERCE, JUSTICE, AND SCIENCE TRANSCRIPT, MAY 7, 2009

Senator ALEXANDER: I have a few questions about the interrogation of enemy combatants. I thought President Obama's first instinct was a good one when he said that we should look forward, but apparently not everyone agrees with that. I notice that a member of the House of Representatives yesterday said that she wanted a full, top-to-bottom, criminal investigation. These are my questions: 1) What directions or guidance have you received from the President or his representatives or anyone in the White House concerning the interrogation of enemy combatants?

Attorney General HOLDER: Well, as we have indicated, for those people who were involved in the interrogation and relied upon, in good faith and adhered to the memoranda created by the Justice Department's Office of Legal Counsel, it is our intention not to prosecute and not to investigate those people. I have also indicated that we will follow the law and the facts and let that take us wherever it may. A good prosecutor can only say that. So, I think those are the general ways in which we view this issue.

Senator ALEXANDER: My second question would be: Should you follow these facts

and continue in an investigation if you're investigating lawyers at the Department of Justice who wrote legal opinions authorizing certain interrogations, wouldn't it also be appropriate to investigate the CIA employees or contractors or other people from intelligence agencies who asked or created the interrogation techniques or officials in the Bush Administration who approved them or what about members of Congress who were informed of them or knew about them or approved them or encouraged them? Wouldn't they also be appropriate parts of such an investigation?

Attorney General HOLDER: Well, there is, as has been publicly reported, an OPR inquiry into the work of the attorneys who prepared those OLC memoranda. It is not in final form yet and I have not reviewed that report. I will look at that report and make a determination as to what we want to do with it. It deals, I suspect, not only with the attorneys, but people that they interacted with, so I think we will gain some insights by reviewing that report. Our desire is not to do anything that would be perceived as political or partisan. We do want to report, to the extent that we can do that, but as I said, my responsibility is to enforce the laws of this nation and to the extent that we see violations of those laws, we will take the appropriate action.

Senator ALEXANDER: If you're going to investigate the lawyers whose opinion was asked about whether this is legal or not, I would assume you could also go to the people who created the techniques, the officials who approved them, and the members of Congress who knew about them and may have encouraged them.

Attorney General HOLDER: Hypothetically that might be true, I don't know. What I want to do is look at, in a very concrete way, what that OPR report says and get a better sense from that report about what it says about the interaction of those lawyers with people in the administration and see from there whether further action is warranted.

Senator ALEXANDER: My last question is, once we begin this process, where is the line drawn? According to former intelligence officials, renditions, and by renditions we mean moving captured people from our country to another country where they might be interrogated or even worse. Those renditions were used by the Clinton Administration beginning in the mid-1990s to investigate and disrupt al-Qaeda. That's the testimony before Congress by Michael Shoyer. He said they began in the late summer of 1995, "I authored it, I ran it, I managed it against al-Qaeda leaders." The Washington Post says the former director of the Central Intelligence Agency, George Tenet, said there were about seventy renditions carried about before Sept. 11, 2001; most of them during the Clinton years. Mr. Attorney General, you were the Deputy Attorney General from 1997-2001. Did you know about these renditions? Did you or anyone else at the Department of Justice approve them? What precautions were taken to ensure these renditions, any interrogations of such detainees on by or behalf of the US Government complied with the law?

Attorney General HOLDER: I think the concern that we have with renditions is renditions to countries that would not treat suspects in a way that's consistent with the laws and treaties that we have signed. If there is a rendition taking a person to a place where that person might be tortured? That's the kind of rendition that I think is inappropriate. My memory of my time in the Clinton Administration, I don't believe that we did that—that we had renditions where people were taken to places where we had any reasonable belief that they were going to

be tortured. That would be the concern that I would have. I wouldn't want to restrict the ability of our government to use all the techniques that we can to keep the American people safe, but in using those tools, we have to do so in a way that's consistent with our treaty obligations and values as a nation.

Senator ALEXANDER: But I think you can see the line of my inquiry which is that if we're going to ask lawyers who were asked their legal opinions, if we're going to investigate them, jeopardize their career, second guess them, look back, then where does that stop? Do we not also have to look at the people who asked for those techniques, people who approved those techniques, the members of Congress who knew about and encouraged those techniques perhaps, or in your case, in the Clinton Administration, we don't know what the interrogations were then. Perhaps you do and perhaps the question would be whether you approved them. I prefer President Obama's approach. I think it's time to look forward and I hope he sticks to that point of view.

Attorney General HOLDER: Well, I will note that the OPR inquiries we've done in the prior administration, and also note that I'm a prosecutor. I've been a career prosecutor and I hope a good one. A good prosecutor uses the discretion that he or she has in an appropriate way and has the ability to know how far an inquiry needs to go to satisfy the obligations that that prosecutor has without needlessly dragging into an investigation at great expense, both personal and professional, people who should not be there and that will be the kind of judgment that I hope I will bring to making the determinations that you express concern about.

Mr. ALEXANDER. Mr. President, I also ask unanimous consent to have printed in the RECORD the statement before the House Committee on Foreign Affairs of Michael F. Scheuer, former Chief of the CIA's Bin Laden Unit, in which he says:

The CIA's rendition program began in late summer, 1995. I authored it, and then ran and managed it against al-Qaeda leaders and other Sunni Islamists from August 1995 until June 1999.

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

STATEMENT BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT SUBCOMMITTEE ON EUROPE
EXTRAORDINARY RENDITION IN U.S. COUNTER TERRORISM POLICY: THE IMPACT ON TRANS-ATLANTIC RELATIONS
(Statement by Michael F. Scheuer, Former Chief, Bin Laden Unit, CIA, Apr. 17, 2007)

THE RENDITION PROGRAM

The CIA's Rendition Program began in late summer, 1995. I authored it, and then ran and managed it against al-Qaeda leaders and other Sunni Islamists from August, 1995, until June, 1999.

(A) There were only two goals for the program:

(1) Take men off the street who were planning or had been involved in attacks on U.S. or its allies.

(2) Seize hard-copy or electronic documents in their possession when arrested; Americans were never expected to read them.

(3) Interrogation was never a goal under President Clinton. Why?

—Because it would be a foreign intelligence or security service without CIA present or in control.

—Because the take from the interrogation would be filtered by the service holding the individual, and we would never know if it was complete or distorted.

—Because torture might be used and the information might be simply what an individual thought we wanted to hear.

(B) The Rendition Program was initiated because President Clinton, and Messrs. Lake, Berger, and Clarke requested that the CIA begin to attack and dismantle AQ. These men made it clear that they did not want to bring those captured to the U.S. and hold them in U.S. custody.

(1) President Clinton and his national security team directed the CIA to take each captured al-Qaeda leader to the country which had an outstanding legal process for him. This was a hard-and-fast rule which greatly restricted CIA's ability to confront al-Qaeda because we could only focus on al-Qaeda leaders who were wanted somewhere. As a result many al-Qaeda fighters we knew were dangerous to America could not be captured.

(2) CIA warned the president and the National Security Council that the U.S. State Department had and would identify the countries to which the captured fighters were being delivered as human rights abusers.

(3) In response, President Clinton et. al asked if CIA could get each receiving country to guarantee that it would treat the person according to its own laws. This was no problem and we did so.

—I have read and been told that Mr. Clinton, Mr. Burger, and Mr. Clarke have said since 9/11 that they insisted that each receiving country treat the rendered person it received according to U.S. legal standards. To the best of my memory that is a lie.

(C) After 9/11, and under President Bush, rendered al-Qaeda operatives have most often been kept in U.S. custody. The goals of the program remained the same, although Mr. Bush's national security team wanted to use U.S. officers to interrogate captured al-Qaeda fighters.

(1) This decision by the Bush administration allowed CIA to capture al-Qaeda fighters we knew were a threat to the United States without on all occasions being dependent on the availability of another country's outstanding legal process. This decision made the already successful Rendition Program even more effective.

(D) The following particulars about the Rendition Program may be of interest to you.

(1) From its start until today, the Program was focused on senior al-Qaeda leaders and not aimed at the rank-and-file members. With only limited manpower to conduct the Rendition Program, CIA wanted to inflict as much damage on al-Qaeda as possible and therefore focused on senior leaders, financiers, terrorist operators, field commanders, strategists, and logisticians.

(2) To the best of my knowledge, not a single target of rendition has ever been kidnapped by CIA officers. The claims to the contrary by the Swedish government regarding Mr. Aghiza and his associate, and those by the Italian government regarding Abu Omar, are either misstatements or lies by those governments.

—Indeed, it is passing strange that European leaders are here today to complain about very successful and security enhancing U.S. Government counterterrorism operations, when their European Union (EU) presides over the earth's single largest terrorist safe haven, and has done so for a quarter century. The EU's policy of easily attainable political asylum and its prohibition against deporting wanted or convicted terrorists to country's with the death penalty have made Europe a major, consistent, and invulnerable

source of terrorist threat to the United States.

(3) Each and every target of a rendition was vetted by a battery of lawyers at CIA and not infrequently by lawyers at the National Security Council and the Department of Justice. For each rendition target, I, and then my successors as the chief of the bin Laden/al-Qaeda operations, had to prepare and present a written brief citing and explaining the intelligence information that made the rendition target a threat to the United States and/or its allies. If the brief persuaded the lawyers, the operation went ahead. If the brief was insufficient, the lawyers disapproved and no operation was conducted against that target until additional reliable evidence was collected.

—Let me be very explicit and precise on this point. Not one single al-Qaeda leader has ever been rendered on the basis of any CIA officer's "hunch" or "guess" or "caprice." These are scurrilous accusations that became fashionable after the Washington Post's correspondent Dana Priest revealed information that damaged U.S. national security and, as result, won a journalism prize for abetting America's enemies, and when such lamentable politicians as Senators McCain, Rockefeller, Graham, and Levin followed Ms. Priest's lead and began to attack the men and women of CIA who had risked their lives to protect America under the direct orders of two U.S. presidents and with the full knowledge of the intelligence committees of the United States Congress. Both Ms. Priest and the gentlemen just mentioned have behaved disgracefully, and ought to publicly apologize to the CIA's men and women who have executed the Rendition Program.

(4) To proceed, the Rendition Program has been the single most effective counterterrorism operation ever conducted by the United States government. Americans are safer today because of the program, but that degree of safety will ebb as the Senators just mentioned slowly but surely destroy the program. If there are those in this Congress, in the media, in this country, or in Europe who believe that we would be safer if Khalid Shaykh Muhammed, Abu Zubaydah, Mr. Hambali, Ibn Shaykh al-Libi, Khalid bin Attash, and several dozen other senior al-Qaeda leaders were still free and on the street, then the educational systems and the reservoirs of common sense on both sides of the Atlantic are in much more dilapidated shape than I thought.

(5) On the issue of how rendered al-Qaeda leaders have been treated in prison, I am unable to speak with authority about the conditions these men found in the Middle Eastern prisons they were delivered to at President Clinton's direction. I would not, however, be surprised if their treatment was not up to U.S. standards, but this is a matter of no concern as the Rendition Program's goal was to protect America and the rendered fighters delivered to Middle Eastern governments are now either dead or in places from which they cannot harm America. Mission accomplished, as the saying goes.

Under President Bush, the rendered al-Qaeda fighters held in U.S. custody have been treated according to guidelines that were crafted by U.S. government lawyers, approved by the Executive Branch, and briefed to and permitted by at least the four senior members of the two congressional intelligence oversight committees.

(6) Finally, I will close by saying that mistakes may well have been made during my tenure as the chief of CIA's bin Laden operations, and, if there were errors, they are my responsibility. Intelligence information is not the equivalent of court-room-quality evidence, and it never will be. But I will again

stress that no rendition target was ever approved or captured without a written brief composed of intelligence information that persuaded competent U.S. government legal authorities. If mistakes were made, I can only say that that is tough, but war is a tough and confusing business, and a well-supported chance to take action and protect Americans should always trump other considerations, especially pedantic worries about whether or not the intelligence data is air tight.

—To destroy the Rendition Program because of a mistake or two or more would be to sacrifice the protection of Americans to venal and prize-hungry reporters like Ms. Priest, grandstanding politicians like those mentioned above, and effete sanctimonious Europeans who take every bit of American protection offered them while publicly damning and seeking jail time for those who risk their lives to provide the protection. If the Rendition Program is halted, we will truly be able to say, by paraphrasing the late film actor John Wayne, that: War is tough, but it is a lot tougher if you are deliberately stupid.

Mr. ALEXANDER. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

TAX BURDEN AND BAILOUTS

Mr. KYL. Mr. President, first, I would like to ask unanimous consent that two op-eds be printed in the RECORD. Let me identify them both.

The first is a piece in the Washington Post of today by Robert Samuelson, titled "Tax Dodge Myths." I think he is one of the best economists and writers in this country. He always has something very useful to say, and his column today made the point that it would be folly for the United States to add a tax burden on American corporations such as Coca-Cola, IBM, Microsoft, Caterpillar—companies like that—that are multinational in the sense that they do business here but also do business in other countries.

It simply makes no sense to add a tax burden onto them as if they are doing something unpatriotic by selling our products in other countries as well as in the United States.

The other is a piece called "The Chrysler Power Grab." It was carried in the Arizona Republic on May 6 of this year and was written by the finest columnist in Arizona. His name is Bob Robb.

In this column, he notes the irony of the fact that the United States has been bailing out two American companies—Chrysler and General Motors—for the purpose of saving American jobs, when in point of fact it looks as though a lot of the results of this action are going to be to transfer jobs to other countries and ironically to compete with companies that may be owned abroad, such as Toyota, but have a lot of American workers. He talks about the fact that Fiat, an Italian company, is hard to distinguish from Toyota, a Japanese company, but we are apparently saving the jobs for Fiat but not those for Toyota.

In any event, I think these are two interesting columns, and I ask unani-

mous consent that they be printed in the RECORD.

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

[From the Washington Post, May 11, 2009]

TAX DODGE MYTHS

(By Robert J. Samuelson)

The U.S. tax code is "full of corporate loopholes that makes it perfectly legal for companies to avoid paying their fair share."—President Obama, May 4.

Like it or not, ours is a world of multinational companies. Almost all of America's brand-name firms (Coca-Cola, IBM, Microsoft, Caterpillar) are multinationals, and the process works both ways. In 2006, the U.S. operations of foreign firms employed 5.3 million workers. Fiat's looming takeover of Chrysler reminds us again that much business is transnational.

For most people, the multinational company is a troubling concept. Loyalty matters. We like to think that "our companies" serve the broad national interest rather than just scouring the world for the cheapest labor, the laxest regulations and the lowest taxes. And the tax issue is especially vexing: How should multinationals be taxed on the profits they make outside their home countries?

Listen to President Obama, and the status quo seems a cesspool. Pervasive "loopholes" engineered by "well-connected lobbyists" allow U.S. multinationals to skirt American taxes and outsource jobs to low-tax countries. So the president proposes plugging loopholes. Some jobs will return to the United States, he said, and U.S. tax coffers will grow by \$210 billion over the next decade.

Sounds great—and that's how the story played. "Obama Targets Overseas Tax Dodge," headlined The Post. But the reality is murkier; the president's accusatory rhetoric perpetuates many myths.

Myth: Aided by those overpaid lobbyists, American multinationals are taxed lightly—less so than their foreign counterparts.

Reality: Just the opposite. Most countries don't tax the foreign profits of their multinational firms at all. Take a Swiss multinational with operations in South Korea. It pays a 27.5 percent Korean corporate tax on its profits and can bring home the rest tax-free. By contrast, a U.S. firm in Korea pays the Korean tax and, if it returns the profits to the United States, faces the 35 percent U.S. corporate tax rate. American companies can defer the U.S. tax by keeping the profits abroad (naturally, many do), and when repatriated, companies get a credit for foreign taxes paid. In this case, they'd pay the difference between the Korean rate (27.5 percent) and the U.S. rate (35 percent).

Myth: When U.S. multinationals invest abroad, they destroy American jobs.

Reality: Not so. Sure, many U.S. firms have shut American factories and opened plants elsewhere. But most overseas investments by U.S. multinationals serve local markets. Only 10 percent of their foreign output is exported back to the United States, says Harvard economist Fritz Foley. When Wal-Mart opens a store in China, it doesn't close one in California. On balance, all the extra foreign sales create U.S. jobs for management, research and development (almost 90 percent of American multinationals' R&D occurs in the United States), and the export of components. A study by Foley and economists Mihir Desai of Harvard and James Hines of the University of Michigan estimates that for every 10 percent increase in U.S. multinationals' overseas payrolls, their American payrolls increase almost 4 percent.