

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business until 3:15 p.m., with Senators permitted to speak for up to 10 minutes each.

The Senator from Maryland.

NOMINATION OF MICHAEL
MUKASEY

Mr. CARDIN. Mr. President, I have the honor of serving on our Judiciary Committee, which is charged with the responsibility of recommending to this full body whether to confirm Judge Mukasey as the next Attorney General of the United States. In that capacity I have had the chance to sit through the confirmation hearings at which Judge Mukasey testified before our committee for 2 days. I chaired the third panel of independent witnesses and had a chance to question national experts in regard to the issues that I think are important and that must be met by our next Attorney General. I had the opportunity to personally meet with Judge Mukasey in my office to go over the priorities of the Department of Justice and how he would try to reverse some of the problems in that Department. I had the chance to specifically ask written questions to the nominee and got responses on those written questions.

I must tell you, first, I do believe Judge Mukasey is an honorable person. He has a distinguished record of public service, and he would represent a refreshing change within the Department of Justice. He has the ability to restore morale and traditional professionalism, particularly among the career attorneys at the Department of Justice.

But one of the critical issues in evaluating who should be our next Attorney General is whether that individual will exercise the independence that is so required by the Attorney General of the United States; in short, whether he will represent the people of our Nation and not just the President of the United States.

We all know the record of the former Attorney General, Alberto Gonzales. We know about how partisan politics interfered with the selection and promotion of career attorneys at the Department of Justice. We all now know the story of the firing of the U.S. attorneys and how it appears that partisan politics in criminal investigations—criminal investigations—may have interfered with the operation of the Department of Justice. So independence is a critically important factor in the next person to be the Attorney General of the United States.

Because of Judge Mukasey's response to the questions relating to waterboarding, I have concern about his independence. Judge Mukasey refused to say that waterboarding is torture. In reply to questions that were

asked, he responded that he would use independent judgment as to what constitutes torture. He said he would prosecute anyone who violated our laws. He said, in fact, if his views conflicted with those of the President of the United States in a fundamental way, and if he were unable to reconcile those differences, he would leave the office rather than compromise his views.

Let me read three questions I asked of the Attorney General nominee. I asked: As Attorney General, would you order the Justice Department to prosecute individuals who, under 18 U.S.C 2340 and 2340(a), committed acts of torture?

Judge Mukasey's answer:

The Department of Justice has an obligation to bring prosecutions to enforce all valid criminal statutes and, as I explained during the hearing, torture is prohibited by federal law.

I then asked the nominee: Do you believe that any "exceptional circumstances" exist that would justify torture?

His answer was no.

I then asked: As Attorney General, would you authorize the use of torture in any circumstance?

Once again, his answer was no.

I cannot understand why Judge Mukasey will not tell us clearly that waterboarding is illegal under our laws. The fact that he leaves open that waterboarding could be permitted as an interrogation technique has me very concerned.

Judge Mukasey now acknowledges he understands what is generally meant by waterboarding. I gave him the benefit of the doubt during the hearing. He said: I am not familiar with the technique.

That is difficult to understand but—OK. He then had time to reflect and learn about waterboarding as generally understood, waterboarding that has been condemned for literally hundreds of years—since the Spanish Inquisition. He now understands what is generally meant by waterboarding. But during the confirmation hearing and in follow-up questions he would not rule out the potential use. Questions asked during the confirmation hearing did not ask about a specific technique that may have been authorized by the President for interrogating detainees. That is not what was asked. The question that was asked is about waterboarding as generally understood. It was not a hypothetical question.

Waterboarding has been condemned by the United States. The United States prosecuted Japanese soldiers for waterboarding as a war crime after World War II. We brought charges as war crimes for those who would try to use that torture technique against Americans.

In 2005, the Congress passed the McCain amendment which prohibits the use of cruel, inhumane, and degrading treatment and punishment of persons under the detention, custody, and control of the U.S. Government. We

also then required that the Army must use the field manual while interrogating detainees.

In 2006, the Army Field Manual specifically prohibited waterboarding. During our final panel of witnesses, I had a chance to question Admiral Hutson, who has a very distinguished record of service to our country—former Navy Judge Advocate General, senior uniformed legal adviser to the Secretary of the Navy and the Chief of Naval Operations. So we had a chance to talk about waterboarding. He said waterboarding is one of the most iconic examples of torture. It was devised during the Spanish Inquisition. Its use has been repudiated for centuries.

Admiral Hutson said we look to the Attorney General as our chief law enforcement officer. He has to be absolutely unequivocal as to what torture is and is not. We need clarity from our principal leaders.

So it appears to me that Judge Mukasey was yielding to the White House pressure on waterboarding in answering the questions of our committee. I find that very troubling. I am looking for an Attorney General who will exercise independent judgment as to what the law of our country is, and that no one is above our law.

On November 1, 2007, President Bush implied if Judge Mukasey answered the questions on waterboarding, he would give "terrorists a window into which techniques we may use and which ones we may not use." I want the President of the United States and the Attorney General of the United States to tell the world, unequivocally, that the United States will not permit the use of torture. I am not clear about the President. We all remember his signing statements to the McCain amendment, which leaves questions as to whether torture could be allowed under some circumstances. Now we are not clear, with Judge Mukasey's answers, as to whether waterboarding could be permitted under some circumstances as a form of torture.

I think it is absolutely clear our leaders must make it apparent to all the United States will not use torture, nor will it ever tolerate any other country using torture or any individuals using torture against an American. If a foreign agent attempts to use waterboarding, as it is generally understood, or any other form of torture against an American, I want our country to use every means at its disposal to hold that offender accountable.

On November 1 the President also said Judge Mukasey could not "go on the record about the details of a classified program he has not been briefed on." I agree with the President of the United States. Judge Mukasey was not asked about specific practices of a classified program. He was requested to give information about waterboarding as generally understood. He had an obligation to answer that question.

The 9/11 Commission, in one of its recommendations to Congress, said the

United States should engage its friends to develop a common approach toward the detention and humane treatment of captured terrorists. Instead, we have gone it alone. We have not sought the advice of the international community, and we are paying a heavy price for the manner in which we are proceeding. We are losing our support internationally as it relates to how we treat detainees. We are losing our ability as an international leader, as the leader in fighting for human rights advancements throughout the world. We are losing our leadership and credibility on this issue.

I serve as the Senate cochair of the U.S. Helsinki Commission and delegate to the Organization for Security and Cooperation in Europe. The OSCE-Helsinki process was started in 1975 between the countries in Europe, Central Asia, Canada, and the United States. It is best known for its human rights dimensions. It fought during the Soviet Union days, behind the Iron Curtain—fought to open the process and to defend human rights and to stand against torture. Today we are fighting in the emerging democracies to make it clear the human rights of all people must be respected, and torture cannot be permitted while we are being questioned by the Organization for Security for Cooperation in Europe as to what we are doing.

I am having a hard time finding the right answers, particularly on the issue of torture. As I said at the beginning, Judge Mukasey is a good person and an honest man. On the critical issue of standing up to this administration as an independent adviser against torture, I have my doubts. For that reason, I will be voting against his confirmation in the Judiciary Committee tomorrow. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, the subject about which the Senator from Maryland speaks is a subject of enormous gravity to this country. We have been laboring with this issue in the Intelligence Committee. The issue is coming to a head with regard to this nomination for Attorney General. Clearly, the policy of this country has to be, clearly: There can be no torture.

At the same time, we have a world out there with a great deal of bad guys who are trying to do harm. It is important for us, when they are in our custody, that we get their cooperation in order to get the information in order to protect our country. How to strike that balance with no torture while still able to adequately get the information in the debriefing sessions—or interrogation, if you will—is the delicate balance this country must face and answer that question.

America is a beacon of light to the world. We have to be different. The people who crafted that Constitution of ours said we are going to be different

from the rest of the world, and we are going to protect freedom of speech and of religion and of assembly and of the press. We are going to protect our citizens from intrusion into their privacy by the Government, unless there is a check and balance of a separate branch of Government, a judge in the judicial branch, granting an order called a warrant so the Government can invade the privacy of the citizen.

All of these things are under assault because of the abuses we have seen in this administration in the last 6 years. Normally, there would not be the abuses, but there are. That is what brings a lot of necessarily delicate issues into the open, issues we would much prefer to be deciding privately, without the full glare of sunshine, if, in fact, the Government was obeying the law.

But that has not been the case. Thus, again, as the Senator from Maryland points out, we are coming to another very delicate situation; this time with regard to the nomination of a very good man, as the Senator says.

But will he act unlike the previous Attorney General did? Will he act as the lawyer for the people instead of the lawyer for the President? Therein it makes it all the more difficult in some of the decisions we are making.

GLOBAL WARMING

I came here to speak about another subject, that is another one that is exceptionally important to the future not only of America but the future of planet Earth. And that is whether this delicate environment that surrounds this planet in an atmosphere is going to go into cardiac arrest which is going to be irreversible unless we do things now.

There is a step in the right direction, and I wish to thank Senator LIBBERMAN and Senator WARNER for their efforts and their hard work in introducing the climate change legislation called America's Climate Security Act. I am a cosponsor of this act. I am because it is acts such as this that will start us on a path to try to reverse the greenhouse effect that is happening to the planet.

What is the greenhouse effect? It is simply when we start putting greenhouse gases in excess into the atmosphere, gases such as carbon dioxide, CO₂; such as nitrous oxide N₂O. Particularly it is the carbon, carbon dioxide. They come from a variety of sources. Maybe 30 percent of the excess carbon dioxide is coming from our personal modes of transportation. Another 40 percent is coming from our electrical utilities plants. What happens is, if you get too much of these gases, such as CO₂, in the air, as the Sun's rays come in and hit the Earth and bounce off the Earth, that heat that radiates out into space, these gases act like the glass top of a greenhouse and trap in the heat, a greenhouse that stays perfectly warm during the winter because of the Sun's heat coming in and cannot escape once inside.

That is exactly how these greenhouse gases work. So if you get too much of

a concentration high in the atmosphere, then the heat cannot radiate into space and the Earth starts to warm. So we have to go at the root cause of the problem—lessening the amount of those gases that act as this greenhouse top surrounding the Earth.

That means cutting emissions from powerplants, from manufacturing plants and from transportation and cutting it significantly. This bill calls for cutting the levels, cutting back to the levels that were emitted in 1990 by 2020.

Then it further says, 30 years after that, we would cut those emissions from the 1990 level another 65 percent. That is the way we are going to avert a catastrophic global warming catastrophic event.

Then the seas are going to continue to rise, the Earth is going to continue to warm. As the Earth warms, the pestilence increases, the storms become more frequent and more ferocious, and if you live in a State as do I, a land we call paradise, but paradise is a peninsula called Florida, sticking down into the middle of oceans on both sides, then you have the greater frequency of the storms, the higher intensity of the storms, and all the greater pestilence that comes along with the storms.

So what this bill does is it sets an overall cap on the greenhouse gas emissions, that would, a matter of law, have to be met over that period of time, 2020, then 2050.

The way you would enforce it, the mechanism would be the buying and selling of credits that companies would have to have in order to get the amount of emissions down to what is the reduced cap.

Now, there has already been a similar plan that has been tried, and that was way back almost two decades ago, the plan on reducing acid rain.

It was buying and selling these credits—in some cases auctioning them, under the new bill—and it worked. So we have to get something into law and get on with the process of saving our planet.

Earlier this year, I went with the chairman of the Environment Committee, Senator BOXER. She took Senators on the committee, she was kind enough to allow folks such as myself who were interested in this subject to go. We went to Greenland. Greenland is the place that has the biggest glacier. Why? It is an island that is 1,200 miles long from south to north, it is 500 miles wide. Hundreds of thousands of years ago it was a piece of rock. Then what would happen each year is the water in the Earth would evaporate, it would form clouds, the clouds would be cooled, the clouds would turn, instead of to rain, to snow; the snow would fall, and it would form a layer.

The next year the same thing would occur. When you do that over hundreds of thousands of years, the snow is packed each year, and that layer that is 2 miles thick now becomes a glacier.

What is happening, and what we saw with our own eyes, is that within a few

years, already 6 miles of the glacier at its edge is receding. How it recedes is, it breaks off, and in the particular fjord or river we went to, we could see these big chunks of ice falling off the glacier into the fjord, floating down the fjord, and out into the Atlantic Ocean.

When they get into the Atlantic Ocean, they are what you have always heard, an iceberg. What we saw as we went around these icebergs in a little boat, huge mounds of ice, but that is only 10 percent of it above the surface of the water. Ninety percent is underneath. Then they get on out into the Atlantic and they melt.

The long and short of it is, if that entire glacier on Greenland were to melt—this is going to surprise you—the seas of the entire planet would rise 21 feet.

Now, obviously that is going to take a long period of time. But you can imagine if we do not reverse what, in fact, is happening—and do not give me this stuff that one person says global warming is true and another person says it is not true and the press treats it as if one is balancing against the other.

No; 99.99 percent of the scientists say global warming is a fact. A de minimis amount say it is not. Let's recognize the science, and this is where you have seen that major committee in the United Nations receive one-half of the Nobel Prize, along with the former Vice President of the United States.

Global warming is a fact. You can imagine if seas start to rise. Suppose they rise, not 21 feet but 3 feet. Do you know what would happen to the coast of Florida? To the coast of Louisiana? To parts coming in around Hilton Head and Charleston and Houston and even all the way up the eastern seaboard?

The stakes are too high. That is why I am cosponsoring this bill. This bill made some progress last week when it was approved by a subcommittee on the Environment and Public Works Committee. The full committee should be taking it up soon. I hope we get action and we can get out on the floor of the Senate and debate it.

I hope to be able to bring to this debate the information of a bunch of us, led by Senator BOXER, who are going to go to Bali, Indonesia, for a global conference for world climate change to get the input of the other nations of the world that have shown they are a lot more concerned about this than the United States has been in the last few years.

I wish to thank our colleagues, all who have been involved. I wish to thank Senator BOXER for her leadership. I wish to thank Senator WARNER, who did not have to do this; he is retiring from the Senate, the senior Senator from Virginia. He is a conservative Republican, but he knows that planet Earth is in peril.

I wish to thank Senator LIEBERMAN, who has been at the forefront of these environmental issues for years. I am

glad to add my voice to their clarion cry for immediate action before it is too late.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

FARM, NUTRITION, AND BIOENERGY ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of H.R. 2419, which the clerk the report.

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.

AMENDMENT NO. 3500

Mr. HARKIN. Mr. President, I have an amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The Senator from Iowa (Mr. HARKIN), for himself, Mr. CHAMBLISS, Mr. BAUCUS, and Mr. GRASSLEY, proposes an amendment numbered 3500.

Mr. HARKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. HARKIN. Mr. President, that was simply the House bill that came over and was at the desk. On behalf of Senator CHAMBLISS, myself, and others, I offer the substitute amendment as the Senate-passed bill. That is what is now pending at the desk.

Today begins the deliberation and amendments on the 2007 Food and Energy Security Act, otherwise known as the farm bill.

I intend to take some time to lay out basically the farm bill and the different titles, some of the things we did in committee, approaches that were done in the past, and what we are looking at in this farm bill. So I will take some time this afternoon to do that.

As I understand it, under the previous order, there will be no amendments in order today.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. HARKIN. It will be opening statements on the bill itself, and we

will proceed to amendments tomorrow at whatever time the Senate convenes.

Mr. President, on behalf of the Senate Committee on Agriculture, Nutrition, and Forestry, I am pleased to bring to the floor the Food and Energy Security Act of 2007, which enjoys broad bipartisan support among all our committee members. In fact, we reported it out by voice vote without a negative vote among the Senators who were present. We had a quorum present.

I thank our ranking member, the senior Senator from Georgia, SAXBY CHAMBLISS, for his leadership and partnership in producing the bill, along with the chairman and ranking member of the Finance Committee, Senator BAUCUS and Senator GRASSLEY, as well as chairman of the Budget Committee, Senator CONRAD.

We generally refer to this legislation as the farm bill. But that title doesn't do justice to the range and scope of the bill. Yes, the bill helps farmers and ranchers who produce an abundance of food and fiber and are contributing ever more to our Nation's energy security. The bill also helps conserve and protect the environment on tens of millions of acres of farmland, rangeland, and wetlands. It is the most important legislation to allow millions of low-income American families put food on the table. It is the single most important legislation for boosting economic growth in jobs and improving the quality of life in rural communities across our Nation.

We have faced a huge challenge in writing this legislation this year. When we wrote the last farm bill in 2002, we had about \$73 billion of new money over 10 years to invest. But for this bill, this year, we barely had any funding above baseline. Fortunately, we have had some help from the Finance Committee in obtaining additional funds. We have also reexamined all of the spending in our baseline to come up with budget offsets. We have combined these funds and produced what I believe is a forward-looking bill to make historic investments in energy, conservation, nutrition, rural development, and promoting better diets and health for all Americans. It also maintains a strong safety net for America's farm producers.

The bill looks to the future and creates new opportunities in agriculture and rural communities. Yet I emphasize that this bill complies with the strict pay-as-you-go budget rules we adopted earlier this year.

This legislation continues a strong system of farm income protection. It is a truism that we have heard many times but "no farms, no food." Our Nation needs programs that will help farm and ranch families survive the inevitable downturns in markets, disasters, and crop failures. We need these programs so that the cycles of markets and weather do not force out of agriculture people who are so vital to grow food, fiber and, increasingly, energy for our Nation.