

**EXTRAORDINARY RENDITION IN U.S.
COUNTERTERRORISM POLICY: THE IMPACT ON
TRANSATLANTIC RELATIONS**

JOINT HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL
ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT
AND THE
SUBCOMMITTEE ON EUROPE
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS

FIRST SESSION

APRIL 17, 2007

Serial No. 110-28

Printed for the use of the Committee on Foreign Affairs



Available via the World Wide Web: <http://www.foreignaffairs.house.gov/>

U.S. GOVERNMENT PRINTING OFFICE

34-712PDF

WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
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**EXTRAORDINARY RENDITION IN U.S.
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TUESDAY, APRIL 17, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,
HUMAN RIGHTS, AND OVERSIGHT AND
SUBCOMMITTEE ON EUROPE,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittees met, pursuant to notice, at 4:35 p.m., in room 2172, Rayburn House Office Building, Hon. Bill Delahunt (chairman of the Subcommittee on International Organizations, Human Rights, and Oversight) presiding.

Mr. DELAHUNT. I will now call to order the Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on Europe; and let me introduce our witnesses as they proceed to the desk.

[The prepared statement of Mr. Delahunt follows:]

PREPARED STATEMENT OF THE HONORABLE BILL DELAHUNT, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS, AND CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT

The Subcommittees will come to order. On behalf of our Subcommittee's ranking member, Mr. Rohrabacher, and myself, let me thank Chairman Wexler and his Ranking Member Mr. Gallegly and their staff for arranging this as a joint hearing. This is our second joint hearing with your Subcommittee and we look forward to others where our interests and jurisdictions overlap.

Our Subcommittee has been conducting a series of hearings on foreign attitudes regarding U.S. policies—attitudes which we need to understand if we are to encourage cooperation of our allies in the struggle against international terrorism and other issues important to our national interest. In the wake of the horrific attacks of 9/11, we were moved by the extraordinary support—the outpouring of sympathy—from across the globe. I shall never forget that headlines in the French newspaper—*Le Monde*—that proclaimed, “Today, we are all Americans.” Sadly, that support has eroded dramatically. In previous hearings, well regarded pollsters testified how world opinion has turned against the United States in recent years. And, the GAO has concluded that this reality has profound consequences for our national interests.

Like American public opinion—foreign public opinion has been affected by the war in Iraq. By disturbing images of prisoner abuse at Abu Ghraib. By the Administration's flouting of the Geneva Conventions at Guantanamo. And by other unnecessary excesses in the execution of our counterterrorism strategy. One initiative that has prompted severe rebuke—particularly from Europe—is the practice of extraordinary renditions.

And, today, we will review those practices and a report by the European Parliament. For those of you unfamiliar with the term, I am referring to the practice by US government officials of seizing individuals suspected of links to Al-Qaeda and other terrorist organizations and transferring them to 3rd countries where some have reportedly faced cruel treatment or torture. Some news reports have called this

our “torture by proxy” program.¹ Or as the minority witness in the second panel said “It’s very convenient. It’s finding someone else to do your dirty work.” (60 Minutes, CBS) The European Parliament’s report, which we are addressing today, also includes in its analysis of extraordinary renditions the forcible abduction of suspects who are then transferred to secret CIA detention facilities for interrogation.

Now the existence of this program isn’t classified. Condoleezza Rice in December 2005 described extraordinary renditions as a ‘vital tool’ in our global fight to safeguard Americans against terrorism.² We also know the practice didn’t come into existence during the Bush Administration. Apparently, some form of rendition has been in practice for decades.³ But, according to press reports, the program has been dramatically expanded by the Bush Administration in both its reach and scope.

These extraordinary renditions are utterly inconsistent with our broader foreign policy goals of promoting democracy and the rule of law, the very foundations of civil society. These practices have brought us universal condemnation and have frustrated our efforts to work in a concerted way with our allies in fighting terrorism.

They also yield no good intelligence. But you don’t need to take my word for it. Former CIA Director Porter Goss himself has said that “torture is counter-productive.”⁴ And Lt. Gen. John F. Kimmons, the Army Deputy Chief of Staff for Intelligence, has said “No good intelligence is going to come from abusive practices. I think the empirical evidence of the last five years, hard years, tell us that.”⁵ Many other military officials have also warned that abusive treatment of detainees endangers American servicemen and women who might face similar treatment at the hands of our enemies.⁶

More importantly, these renditions not only appear to violate our obligations under the UN Convention Against Torture and other international treaties, but they have undermined our very commitment to fundamental American values. These values are what define us as a people, as a nation. When we undermine them, we undermine everything we stand for, everything we are.

Look at the case of Khaled El-Masri, an innocent man kidnapped and brought to Afghanistan by the CIA where he was brutally interrogated and then dumped off in the Albanian countryside. How can these kinds of operations help us? How can we justify such actions by our intelligence services?

Nations across the globe envy our commitment to freedom and the rule of law. But they are appalled at our hypocrisy when we betray those values. The State Department recently issued its annual Human Rights Country Reports criticizing abusive practices carried out overseas. How much credibility can such a report have when we ourselves are involved in abusive practices?

Congress has a role here in ensuring that our laws—our values—are respected by any Administration. This Congress unfortunately has abdicated its oversight responsibility—a failure which these hearings will begin to correct. But while Congress took no action, others stepped up to the plate. Much of what we know about the renditions program is known because of the important work of news agencies and nongovernmental organizations. In January, the European Parliament made an important contribution to the debate by issuing a report on what the CIA was doing in Europe, and on their own governments’ apparent complicity in its operations.

Today, we will hear from two European Parliamentarians, Claudio Fava and Baroness Sarah Ludford, involved in preparing that report. Another Member of the Parliament, Jonathan Evans, will speak on the impact this practice has had on our transatlantic relations. On our expert panel, Julianne Smith from the Center for Strategic International Studies will also discuss how the practice has affected European cooperation with us. Mr. Michael Scheuer, former Chief of the Bin Laden Unit at the CIA, will likewise make a statement. I look forward to their testimony.

But before introducing these speakers, let me first turn to my Ranking Member, Dana Rohrabacher, for his opening statement, then to Chairman Wexler and Mr. Gallegly.

Mr. DELAHUNT. Without objection, a statement from Amnesty International, which is included in the member packets, will be made a part of the record.

So ordered.

¹New York Times Editorial, March 8, 2005.

²Remarks Upon Her Departure from Europe, Andrews Air Force Base, Dec. 5, 2005

³*Id.*

⁴Good Morning America Interview, ABC News Broadcast, Nov. 29, 2005.

⁵R. Jeffrey Smith and Michael Fletcher, Bush Says Detainees Will Be Tried: He Confirms Existence of CIA Prisons, *Washington Post*, Sept. 7, 2006, Pg. A01.

⁶Letter from Retired Military Leaders to Chairman Warner and Sen. Levin, Sept. 12, 2006.

[The information referred to follows:]

STATEMENT SUBMITTED FOR THE RECORD BY AMNESTY INTERNATIONAL USA

Amnesty International commends the House Committee on Foreign Affairs, the Subcommittee on International Organizations, Human Rights, and the Oversight and the Subcommittee on Europe for having the first open hearing in Congress to investigate the current practice of extraordinary renditions.

Amnesty International's 1.8 million members worldwide are dedicated to working against human rights abuses committed by governments and armed groups around the world. For more than four decades, our work has been guided by the Universal Declaration of Human Rights and other international laws and standards, including the Geneva Conventions and the Convention Against Torture, which the United States championed and helped create over many decades. Our annual report summarizes human rights concerns in 149 countries and territories. We strive to be objective and impartial.

Amnesty International joined the world in condemning the brutal attacks on September 11, 2001, denouncing them as crimes against humanity and demanding justice in accordance with the law. Amnesty International recognizes that governments not only have the right, but the obligation to ensure the security of their people. The best and most effective way to promote security is to preserve human rights and the rule of law. Departure from long established, fundamental legal protections only promotes lawlessness and ultimately makes everyone less safe.

The world looks to the United States as a leader to set the standards for protecting and promoting human rights, human dignity, and the rule of law. That is why it is especially devastating that policies and practices of the U.S. government today are inconsistent with U.S. law and international human rights standards. Evidence continues to mount of U.S. and European complicity in the extralegal transfer of people into the custody of countries where they are at risk of torture and other human rights abuses.

Amnesty International uses the term "rendition" to describe the transfer of individuals from one country to another, by means that bypass all judicial and administrative due process. In the "war on terror" context, the practice is mainly—although not exclusively—initiated by the United States, and carried out with the collaboration, complicity or acquiescence of other governments. The most widely known manifestation of rendition is the secret transfer of terror suspects into the custody of other states—including Egypt, Jordan, and Syria—where physical and psychological brutality feature prominently in interrogations. The rendition network's aim is to use whatever means necessary to gather intelligence, and to keep detainees away from any judicial oversight.

However, the rendition network has also served to transfer people into U.S. custody, where they may end up in detention centers in Guantánamo Bay, Cuba, Iraq, or Afghanistan, or in secret facilities known as "black sites" run by the Central Intelligence Agency (CIA). In a number of cases, individuals have been transferred in and out of U.S. custody several times. Muhammad Saad Iqbal Madni, for instance, was arrested by Indonesian intelligence agents in January 2002, allegedly on the instructions of the CIA, who flew him from Jakarta to Egypt, where he "disappeared" and was rumored to have died under interrogation. In fact, he had been secretly returned to Afghanistan via Pakistan in April 2002 and held there for 11 months before being sent to Guantánamo Bay in March 2003. It was more than a year later that fellow detainees, who said he had been "driven mad" by his treatment, managed to get word of his existence to their lawyers.

Rendition is sometimes presented simply as an efficient means of transporting terror suspects from one place to another without red tape. Such benign characterizations conceal the truth about a system that puts the victim beyond the protection of the law, and sets the perpetrator above it.

Renditions involve multiple layers of human rights violations. Most victims of rendition were arrested and detained illegally in the first place: some were abducted; others were denied access to any legal process, including the ability to challenge the decision to transfer them because of the risk of torture. There is also a close link between renditions and enforced disappearances. Many of those who have been illegally detained in one country and illegally transported to another have subsequently "disappeared," including dozens who have "disappeared" in U.S. custody. Every one of the victims of rendition interviewed by Amnesty International has described incidents of torture and other ill-treatment.

Because of the secrecy surrounding the practice of rendition, and because many of the victims have "disappeared," it is difficult to estimate the scope of the program. In many countries, families are reluctant to report their relatives as missing

for fear that intelligence officials will turn their attention on them. The number of renditions cases currently appears to be in the hundreds: Egypt's Prime Minister noted in 2005 that the United States had transferred some 60–70 detainees to Egypt alone, and a former CIA agent with experience in the region believes that hundreds of detainees have been sent by the United States to prisons in the Middle East. However, this is a minimum estimate. Rendition, like “disappearance,” is designed to evade public and judicial scrutiny, to hide the identity of the perpetrators and the fate of the victims.

The United States has had help in its renditions program from European countries that have facilitated such transfers and from the countries that have received and detained rendition victims. Europe's governments have repeatedly denied their complicity in the U.S. program of rendition. As more evidence of this program has come to light, however, it has become clear that many European governments have adopted a “see no evil, hear no evil” approach when it comes to rendition flights using their territory, and that some states have been actively involved in individual cases.

European airports and airspace have been used by CIA airplanes¹ for flights that have repeatedly been linked to renditions. Agents of a few European countries have participated in the apprehension of people destined for rendition or in the interrogation of such detainees once they have been transferred to countries where torture is known to be routine. The rendition program has also highlighted the fact that foreign intelligence agencies operate covertly in Europe outside the rule of law and without accountability.

Amnesty International commends the Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners and the Council of Europe's Committee on Legal Affairs and Human Rights for their investigations into European complicity in renditions, along with the investigations in Italy, Germany, Spain, Sweden, the UK and other EU member nations. In the face of all the evidence presented by the Temporary Committee, the Council of Europe, EU member states, the media and non-governmental organizations, the duty of each and every government to investigate the crimes that have occurred in and through European territory and by members of U.S. and European security services should no longer be open to question.²

Amnesty International also recognizes that the responsibility does not end with the United States and Europe. Countries such as Egypt, Syria, Morocco, and Jordan that have received renditions victims and subjected them to torture, indefinite detentions, and disappearances must also be held to account for violating the human rights of people in its custody. The practice of extraordinary renditions could not function without governments who are willing to receive, detain, torture or mistreat the people who are transferred into their custody.³

Amnesty International will continue to press the U.S. Government to cooperate with any and all investigations into this reprehensible practice, and to ensure accountability for any of its agents who are found to have violated the laws of the countries in which they are operating. The practice of extraordinary renditions violates U.S. and international law, has led to false confessions under torture, and has interfered with U.S. relations with its allies. Recently, John Bellinger, Legal Advisor to Secretary of State Condoleezza Rice, told journalists in Brussels “I do think these continuing investigations can harm intelligence cooperation—that's simply a fact of life.”⁴ It is Amnesty International's position that it is the illegal behavior of U.S. agents overseas and policies that directly contravene international law that have interfered with U.S. relations with its allies. Rather than criticize European bodies for investigating alleged human rights abuses, the United States should fulfill its own responsibility to conduct investigations and cooperate with others in order to ensure transparency and accountability for policies that violate its laws and treaty obligations.

¹The term “CIA planes” in this report refers to planes operated or leased by the CIA either directly or through shell companies.

²For more on European participation in renditions, see Amnesty International's report “Partners in Crime” at <http://web.amnesty.org/library/index/ENGEUR010082006>.

³For more formation on renditions to Egypt, see Amnesty International's report “Egypt—Systematic abuses in the name of security” at <http://amnesty.org/resources/Egypt1/index.html>, and for more information on renditions to Jordan, see Amnesty International's report “Jordan ‘Your confessions are ready for you to sign’ Detention and torture of political suspects” at <http://web.amnesty.org/library/Index/ENGMDE160052006?open&of=ENG-JOR>.

⁴Craig Whitlock, “U.S. Won't Send CIA Defendants To Italy,” Washington Post, March 1, 2007.

AMNESTY INTERNATIONAL RECOMMENDATIONS:

Stop the practice of Extraordinary Renditions

- Do not render or otherwise transfer to the custody of another state anyone suspected or accused of security offences unless the transfer is carried out under judicial supervision and in full observance of due legal process.
- Ensure that anyone subject to transfer—prior to being transferred—has the right to challenge its legality before an independent tribunal, and that they have access to an independent lawyer and an effective right of appeal.
- Do not receive into custody anyone suspected or accused of security offences unless the transfer is carried out under judicial supervision and in full observance of due legal process.
- Investigate any allegations that their territory hosts or has hosted secret detention facilities, and make public the results of such investigations.

No diplomatic assurances

- Prohibit the return or transfer of people to places where they are at risk of torture or other ill-treatment.
- Do not require or accept “diplomatic assurances” or similar bilateral agreements to justify renditions or any other form of involuntary transfers of individuals to countries where there is a risk of torture or other ill-treatment.

No renditions flights

- Ensure that airports and airspace are not used to support and facilitate renditions or rendition flights.

Investigate violations

- Ensure the accountability of intelligence agencies, including by prohibiting the practice of mutual assistance in circumstances where there is a substantial risk that such co-operation would contribute to unlawful detention, torture or other ill-treatment, enforced disappearance, unfair trial, or the imposition of the death penalty.
- Ensure countries’ full co-operation with ongoing national and international investigations on rendition and secret detention, including by providing them with access to all relevant people and information.

Mr. DELAHUNT. Let me introduce our witnesses today.

Julianne Smith is the director of the Europe Program and the Initiative for a Renewed Transatlantic Partnership where she leads the center’s research and program activities on U.S.-European political, security, and economic relations. She co-directs the Transatlantic Dialogue on Terrorism, which examines United States-European disagreements over the root causes of terrorism.

She also served as one of the lead investigators for the CSIS project on European Defense Integration. She is the author or contributor to a number of CSIS books and reports, including “America and the World in the Age of Terror” and “Transforming NATO (. . . again): A Primer for the NATO Summit in Riga 2006,” “Five Years After 9/11: An Assessment of America’s War on Terror.”

Dr. Scheuer—am I pronouncing your name right?

Mr. SCHEUER. Yes. Scheuer.

Mr. DELAHUNT [continuing]. Has served in the CIA from 1982 to 2004, 19 of those years handling covert action. He most recently served as chief of the Bin Laden Unit at the Agency.

He is the author of *Imperial Hubris*, a *New York Times* and *Washington Post* bestseller, translated into eight languages. He also wrote *Through Our Enemies Eyes: Osama Bin Laden, Radical Islam and the Future of America*. His commentary has been published in leading news publications such as the *New York Times*, and he has appeared on multiple news programs. He is also an adjunct professor of security studies at Georgetown University.

Let me express to both of you my appreciation for your patience and endurance. There is an indication that we might—that the House comes back into session at 5 o'clock, but I am hopeful that votes will not be taken at 5 o'clock but at some later time.

Why don't we proceed first with Ms. Smith.

STATEMENT OF MS. JULIANNE SMITH, DIRECTOR AND SENIOR FELLOW, EUROPE PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES

Ms. SMITH. Well, thank you very much, Chairman Delahunt, for this opportunity to address you and other members of both subcommittees. I have submitted written testimony that I believe everyone has a copy of, so I am going to use my designated few minutes to make a couple of key points.

As a European analyst, who spends a considerable amount of time in Europe meeting with policymakers and addressing a variety of public audiences, I can confirm that the issue of extraordinary rendition, along with press revelations about secret prisons in Europe, have cast a rather dark shadow on our relationship with our European allies. While transatlantic intelligence and law enforcement cooperation does continue, European political leaders are coming under increasing pressure to distance themselves from the United States. Over time, I do believe that this could pose a threat to joint intelligence activity with our European allies.

Now it is well known that America's image in Europe has declined quite steadily over the last couple of years, and some of the reasons for that were cited earlier this afternoon, in part due to the decision of the United States to go to Iraq, human rights abuses at Abu Ghraib and allegations of torture at Guantanamo bay. But we seemed to move away from some of these dark days in the transatlantic relationship as we moved into 2005, as both sides of the Atlantic I think, both Europe and the United States, made a conscious effort to renew transatlantic ties.

When it was alleged, however, later in 2005—at the end of 2005 that the United States was detaining top terror suspects in so-called "black sites" in eight countries and that the CIA was flying terror suspects between secret prisons and countries in the Middle East that have been known to torture detainees, the United States image in Europe took another dive.

On the particular issues of rendition, as we have heard earlier, Europeans appear to have two primary concerns, one, Washington's unwillingness to grant due process to terror suspects and, two, violation of suspects' human rights during interrogation.

Now the allegations that have been submitted and the resulting investigation by the European Parliament have in many ways in my mind confirmed Europeans' worst fears. Many Europeans, particularly at the public level, believe that they have plenty of evidence right now to prove a long-suspected gap between United States stated policies and U.S. action. As a result, U.S. promises not to torture terror suspects and to uphold the fundamental pillars of international law are no longer seen as credible.

The question is, does any of this matter? President Bush has noted on several occasions that making policy is not a popularity contest, and he is right about that. But when political leads in

other countries start to feel that standing shoulder to shoulder with the United States is a political liability, I think that low favorability ratings can indeed hinder America's ability to solve global challenges with its many partners and allies around the world; and I would cite a couple of reasons for this.

First, as we have seen with the tensions over the issue of rendition, this particular issue has put unnecessary strain, in my mind, on what has been, in many cases, a very positive relationship. In fact, it is distracting the two sides from the core task at hand; and that is, of course, combating terrorism.

Second, as I mentioned earlier, European political leaders are under pressure from their publics to keep the United States at arm's length. I don't know that this pressure will ever halt counterterrorism cooperation with our European allies in full or certainly not in the near term, but there are signs that negative public opinion is making it more difficult for our European allies to cooperate with the United States. One only has to look at the latest European responses to United States requests for more support in Afghanistan to find one such example.

Finally, I would point out that the United States and Europe are facing a long list of challenges above and beyond terrorism, things like energy security, nonproliferation, brewing regional crises, Darfur; and the list goes on and on. In many of these areas, the United States are asking—we are asking Europe to do more.

But differences in our counterterrorism relationship with Europe have affected our relationship at other levels. Again, negative public sentiment toward the United States will never succeed in halting our cooperation with Europe entirely, but it does make asking for greater European support in other areas that much more challenging.

Just to conclude, I would point out—and I feel very strongly—that Europe is one of America's most important partners in combating radical extremism, and there is certainly no shortage of success stories in the many things we have done together, particularly over the past 6 years in this area. But I do feel—again based on my experience traveling back and forth to Europe on a regular basis—that this relationship that we share is currently played with mistrust and divisions over strategy and tactics.

Assuming that the war on terror is not going to end any time soon, I do think that the United States should take a number of systems to revitalize the Coalition's mission and morale.

Thank you very much.

[The prepared statement of Ms. Smith follows:]

PREPARED STATEMENT OF MS. JULIANNE SMITH, DIRECTOR AND SENIOR FELLOW,
EUROPE PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES

Thank you, Mr. Chairman, for this opportunity to address you and members of the House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on Europe, on the impact of extraordinary rendition in U.S. counter terrorism policy on transatlantic relations. As a European analyst who spends a considerable amount of time in Europe meeting with policymakers and addressing public audiences, I can confirm that extraordinary rendition, along with the press revelations about secret U.S. prisons in Europe, have cast a dark shadow on our relationship with our European allies. While transatlantic intelligence and law enforcement cooperation continues, European political leaders are coming under increasing pressure to distance themselves

from the United States. Over time, this could pose a considerable threat to joint intelligence activity with our European allies.

AMERICA'S ONGOING IMAGE PROBLEM IN EUROPE

The transatlantic relationship has long been heralded as one of the strongest—if not *the* strongest—partnerships in the international system. Over the last five years, however, America's image in Europe, particularly at the public level, has declined steadily. The war in Iraq, human rights abuses at Abu Ghraib, and allegations of torture and the desecration of the Koran at the Guantanamo Bay detention camp marked the years between 2003 and 2005 as some of the darkest and most strained in the history of the transatlantic relationship. During this period, polling data from the Pew Research Center for the People and the Press and the German Marshall Fund of the United States pointed to a steep decline in the favorability ratings of the United States.

In the last two years, efforts have been made on both sides of the Atlantic to renew transatlantic ties, and anecdotal evidence over the last year suggests an improvement at least at the political elite level.¹ However, European publics continue to have a negative view of the United States, and America's "war on terror" remains widely unpopular. In fact, data from a Pew poll conducted in the summer of 2006 found that people in Great Britain, France and Spain believe the U.S.-led war in Iraq is a greater threat to world peace than Iran's government and its nuclear program.² Anyone who has made a trip to Europe in recent months has certainly noticed the long list of grievances that Europeans often cite against the United States and its war on terror. Europeans complain of U.S. arrogance, question U.S. commitment to human rights and international law, and warn that the United States is fueling more conflicts than it is resolving.

When it was alleged in late 2005 that the United States was detaining top terror suspects in so-called "black sites" in eight countries and that the Central Intelligence Agency (CIA) was flying terrorist suspects between secret prisons and countries in the Middle East that have been known to torture detainees, America's image in Europe took another dive. For the past five years, Europeans have expressed deep concern over two issues: Washington's unwillingness to grant due process to terror suspects and the violation of suspects' human rights during interrogations. The rendition allegations and resulting investigation by the European Parliament have now confirmed Europe's worst fears. Many Europeans now believe they have ample evidence to prove a long suspected gap between U.S. stated policies and action. As a result, U.S. promises not to torture terrorist suspects and to uphold the fundamental pillars of international law by offering all individuals a fair trial are no longer seen as credible.

America's moral authority has also suffered damage from the discovery that since September 11, the CIA has reportedly sent terror suspects to Syria—a country that, according to the U.S. State Department, uses torture during imprisonment.³ For the Bush Administration to simultaneously oppose engaging Syria in efforts to revive the Arab-Israeli peace process and stabilize Iraq on that grounds that Syria is a state sponsor of terrorism strikes European audiences as the epitome of hypocrisy. The conclusion some Europeans draw from such incidents is that the United States will partner with countries with poor human rights records in the name of short-term tactical gains in the war on terror.⁴

Such conclusions are disappointing for a corner of the world that once felt enormous gratitude for American action during the Cold War and into the 1990s. For decades Europeans have looked to the United States as the preeminent advocate of democratic values and human rights. Today America's moral authority is eroding, jeopardizing the transatlantic relationship and threatening U.S. national security.

¹President George Bush's decision to visit both NATO and the EU in early 2005 had a very positive effect on the transatlantic relationship. It was the first time a U.S. President had visited European institutions.

²U.S. a bigger threat than Iran? Bush calls idea "absurd." (2006, June 22). *Seattle Times*, website. Available at http://seattletimes.nwsourc.com/html/nationworld/2003077518_bush22.html

³Brown, D. & Priest, D. Deported terror suspect details torture in Syria. (2003, Nov 5). *Washington Post*, p. A1.

⁴Supporting this claim, in February 2006, in return for access to one of its citizens being held in Morocco (an al-Qaeda suspect arrested in connection with the September 11 attacks), the United States asked Germany to "avert pressure" from the EU over human rights abuses in Morocco, reminding Germans that Morocco is a "valuable partner in the fight against terrorism." See "CIA tried to quell EU protest over rendition flights." Oct 26, 2006.

WHY IMAGE MATTERS

President Bush has noted on several occasions that making policy is not a popularity contest. True. But when political elites in other countries start to feel that standing shoulder to shoulder with the United States is a political liability, low favorability ratings can indeed hinder America's ability to solve global challenges.

Europe is one of America's most important partners in combating the threat of radical extremism. Over the last five years, the United States has worked with partners in Europe to arrest and capture committed jihadists, halt terrorist recruitment, and address the roots of radicalization. That relationship has been fruitful on all fronts, producing countless counter terrorism victories and significantly improving the safety and security of citizens on both sides of the Atlantic.

Transatlantic tensions over rendition are threatening the U.S.-European counter terrorism cooperation in a number of ways. First, it is putting unnecessary strain on our relationship with Europe and distracting the two sides of the Atlantic from the tasks at hand. Instead of focusing on joint counter terrorism policies, European and American policymakers are now bogged down in disputes about rendition.

Second, European political elites are under enormous pressure from their publics to distance themselves from America's war on terror. While such pressure is unlikely to bring U.S.-European counter terrorism cooperation to a halt in the near term, there are already signs that negative public opinion is making it more difficult for political leaders in Europe to cooperate with the U.S. One only has to look at the latest European responses to U.S. calls for an increase in troop commitments in southern Afghanistan. While a number of political and military leaders in Europe have told me privately that they would support such a move, most claim that pushing that decision through national parliaments would be next to impossible. Europeans commonly believe that the United States abandoned its efforts in Afghanistan to pursue the unpopular Iraq war, leaving European governments and forces to deal with the dangerous security situation that the Iraq war in part created. This assumption, combined with a generally negative view of the United States, makes it political suicide for political elites to push for additional support on America's war on terror.

In those cases where political elites are willing to swim against the rising tide of public opinion to pursue bilateral or multilateral counter terrorism cooperation with the United States, some request that their support remain discreet. Few know, for example, that the CIA and French intelligence services established a top-secret joint intelligence center in 2002 in Paris called Alliance Base.⁵ Nor are most French citizens aware that as President Chirac was publicly battling the Bush Administration in its drive to go to war in Iraq, France was secretly agreeing to deploy 200 French special forces under U.S. command in Afghanistan. France prefers it that way. Publicly acknowledging close cooperation with the United States carries a certain risk of political vulnerability and public backlash.

Finally, unrelated to terrorism, the United States and Europe are facing an unusually long list of global challenges. In each of these areas—from energy security to regional crises such as Darfur to nonproliferation—Americans have been repeatedly asking Europeans to do more. But American policies do not operate in a vacuum. Difficulties in our counter terrorism relationship with Europe affect our relationship at other levels. Again, negative public sentiment towards the United States will never succeed in halting our cooperation with Europe entirely. It does, however, make asking for greater European support in other areas more challenging.

BEYOND AMERICA'S IMAGE AND PUBLIC OPINION

The transatlantic tension surrounding the accusations of extraordinary rendition and secret prisons are doing more than battering America's image and making U.S. allies hesitate before cooperating with the United States. There are clear signs that the renditions themselves are having a negative impact on European counter terrorism efforts and the U.S.-European counter terrorism relationship more broadly.

In at least one rendition case, the United States knowingly removed one of Italy's better sources in an ongoing investigation. According to a piece in *The Chicago Tribune* by John Crewdson in January of this year, the Italian intelligence services had had Abu Omar under surveillance for months.⁶ Through wire tapping and videotaping, the Italians were investigating Omar's suspected role in helping young European Muslims travel to Iraq to fight against the anticipated invasion. When the CIA abducted Omar in Milan in February 2003 (despite its knowledge of the Italian

⁵Priest, D. Help from France key in covert operations. (2005, July 5) *Washington Post*, p. A1.

⁶Crewdson, J. CIA chiefs reportedly split over cleric plot: Agency schisms come to light in Italy probe. (2007, Jan 8). *The Chicago Tribune*.

surveillance operation), the trail went cold, ending a major Italian investigation. While it is still too early to tell, one wonders whether or not DIGOS, Italy's anti-terrorist unit (which was not informed of the decision to render Omar⁷), will be as forthcoming with intelligence next time they coordinate with the United States on similar matters.

There is also evidence that revelations about the use of rendition in Europe have hindered Europeans' ability to recruit moderate Muslims to their intelligence sources. At the 2006 Aspen Ideas Festival in Colorado, Sir Richard Dearlove, the former Head of British Intelligence, MI6, remarked that the rendition issue has hindered the ability of Western intelligence agencies to recruit moderate Muslims because they no longer think countries like the UK are on the right side of the argument. To be sure, weighing the need to arrest and capture terrorist suspects against the necessity to win hearts and minds is a delicate balancing act—one with which each side of the Atlantic is struggling. In many cases, these two goals often work at cross-purposes. The question is—in countries with large Muslim communities that are increasingly disgruntled and isolated such as the UK—how far will Europeans allow their cooperation with the United States to trump their efforts to win hearts and minds, particularly if they believe the cooperation can lead to potentially destructive or counterproductive outcomes at home?

Finally, Europeans have long complained that intelligence sharing with the United States is one sided, that the United States takes far more than it is willing to give. The rendition and secret prisons issue has no doubt confirmed this suspicion, with several countries complaining that they were not adequately informed of such operations. (It is important to note, however, that in all cases at least a handful of Europeans knew about these operations and are therefore complicit.) To cite one public case, Spanish judge Baltasar Garzon complained in June of 2006 that U.S. officials were concealing information on the whereabouts of Mustafa Setmariam, a Syrian with Spanish citizenship, who is accused of being involved in both the September 11 attacks and the Madrid train bombings.⁸ Setmariam was captured in Pakistan in the fall of 2005 and is believed to be detained in a secret prison operated by the CIA. Spain cannot request his extradition because he has not been officially imprisoned. This incident has soured an already strained relationship between the U.S. and Spain. It is therefore not inconceivable that European intelligence services may, as a result of ongoing investigations, become more reluctant to share information.

IMPACT INSIDE EUROPE

In addition to creating tension between the United States and Europe, accusations of extraordinary rendition have spurred a number of heated debates inside Europe, creating multiple divides across the European continent. Fourteen countries have now admitted allowing the CIA to run secret prisons or carry out rendition on their territory. According to the document issued by the European Parliament, "Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners," 1,245 flights operated by the CIA have flown into European airspace or stopped at European airports. Those figures have placed several European leaders and governments under scrutiny and raised a number of thorny questions about the degree to which European governments were complicit in the abduction of the European citizens in question. There is little doubt that at least a small number of government employees—probably intelligence officers—in all 14 countries not only knew about what was happening but pledged to help. As a result, five divides have surfaced inside Europe on this issue:

- *Divisions between the EU and national governments.* The European Parliament has taken an aggressive role in investigating the extraordinary renditions. Its report on the subject, released in January 2007, named and shamed the countries that cooperated with the United States (particularly, the UK, Italy, and Germany) and chided some European governments for failing to cooperate with their investigation. EU Justice and Home Affairs Commissioner, Franco Frattini, went so far as to threaten any EU member found guilty of participating in the CIA's alleged conduct with the loss of its voting rights.
- *Divisions between Central/Eastern and Western Europe.* Both Romania and Poland have been under some of the heaviest criticism for refusing to cooper-

⁷ Ibid.

⁸ Madrid bombings mastermind imprisoned in secret CIA jail. (2007, April 8). *The International News*, website. Available at http://www.thenews.com.pk/top_story_detail.asp?Id=3692.

ate with the European Parliament's investigation.⁹ Polish military intelligence officials have admitted that CIA planes did land on Polish soil, but those same officials refuse to provide any additional details on when and how the operations were conducted and how much they knew about them. As a result, Poland has been reprimanded by its western neighbors and the EU for its complicity and warned that its pro-U.S. stance should not come into conflict with its stated commitments to uphold international norms on human rights.

- *Divisions between European publics and their governments.* European publics have channeled their anger and disappointment at two targets—the United States and their own governments. Some Europeans claim that they have lost faith in their own country's commitment to human rights, which European citizens have often regarded as much more morally rooted than that of the United States. Europeans have stressed that both issues—the failure to require due process and the alleged use of torture—are in direct contradiction with European norms on human rights.
- *Divisions inside European governments between intelligence services and other agencies, particularly those tasked with anti-terror policies.* In the case of Italy, DIGOS, Italy's anti-terrorist unit, was not informed of U.S. plans to render Abu Omar, whom they had under surveillance. SISMI, the Italian CIA counterpart, was not only informed but assisted in the operation. This scenario, likely played out in other countries across Europe, has created tension between those who knew and those who didn't. As one retired U.S. intelligence officer told me just last week, "It has left more than a few European government officials questioning the loyalty of their intelligence services. In other words, do they work for their own country or the United States?"

WHY DIVISIONS INSIDE EUROPE HURT THE UNITED STATES

As witnessed with the animated debates over the future of the EU Constitutional Treaty, a divided Europe is a distracted Europe. And a distracted Europe is a weaker Europe. Internal bickering has been shown to hinder Europe's ability to take decisions as one and serve as a strong partner to the United States in addressing global challenges. At a time when America needs the EU to assert its role on the global stage, the five internal divisions cited above are absorbing significant amounts of energy and time.

Perhaps more troubling is the effect that the rendition issue has had on traditionally pro-U.S. allies—countries such as the United Kingdom and Poland. These countries have taken great pains to cooperate with the United States in spite of declining favorability ratings for the United States. The argument put forward by policymakers in those countries has always been that maintaining strong ties with the United States is a top priority. But the days when these pro-U.S. countries would do just about anything in the name of maintaining a close relationship with the United States might be coming to a close. Polish leaders in particular will increasingly have to balance their interest in supporting U.S. policies against pressure from their European neighbors to distance themselves from the United States.

CONCLUSION

While there is no shortage of success stories in the international fight against terror, especially among the transatlantic partners, the global coalition is plagued with mistrust and divisions over strategy and tactics. Assuming the war on terror will not end soon, the United States should take a number of steps to revitalize the coalition's mission and morale. Specific to the question of rendition, the United States should publicly and repeatedly emphasize its commitment to human rights and to the degree possible, make its policies and strategies transparent and open to debate. To be sure, the United States cannot and should not change its policies solely to improve public opinion. But the U.S. government must recognize that negative sentiment towards the United States can at times threaten the overall effectiveness of its counter terrorism cooperation with European allies.

Mr. DELAHUNT. Thank you, Ms. Smith.
Dr. Scheuer.

⁹The Polish Parliament, however, claims they were never asked and had they been asked, they would have cooperated fully.

**STATEMENT OF MR. MICHAEL F. SCHEUER, FORMER CHIEF,
BIN LADEN UNIT, CENTRAL INTELLIGENCE AGENCY**

Mr. SCHEUER. Mr. Chairman, before my time starts, I would like to note—I am sure it was a mistake, but the way your opening remarks were phrased, your quotations from me from *60 Minutes*, I was referring to the Clinton administration, not to the Bush administration. I am sure it was a juxtaposition somehow, but I would like to have that corrected, sir.

Mr. DELAHUNT. Of course.

Mr. SCHEUER. All right. 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 were only two goals for the program: First, to take men off the street who were planning or had been involved in attacks on the United States or its allies; second, to seize hard copy or electronic documents in their possession when arrested. Americans were never expected to read those, and they could provide options for follow-on operations.

I would like to add interrogation was never a goal under President Clinton. Why? Because it would be a foreign intelligence or security service without CIA being present or in control who would conduct the interrogation, because the take from the interrogation would be filtered by that service holding the individual and we never knew if it was complete or distorted, and because torture might be used and the information might be simply what an individual thought we wanted to hear.

The Rendition Program was initiated because President Clinton and Messrs. Lake, Berger and Clarke requested that the CIA begin to attack and dismantle al-Qaeda. These men made it clear from the first that they did not want to bring those captured to the United States or to hold them in U.S. custody.

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 for a legal process. As a result, many al-Qaeda fighters we knew of and who were dangerous to America could not be captured.

CIA warned the President and his 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.

In response, President Clinton and his team asked if CIA could get each receiving country to guarantee that it would treat a person according to its own laws. This was no problem, and we did so.

I have read and been told that Mr. Clinton, Mr. Berger 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.

After 9/11 and under President Bush, rendered al-Qaeda operatives have been most often kept in U.S. custody. The goals of the program remain the same, although Mr. Bush's national secu-

rity team wanted to use U.S. officers to interrogate captured al-Qaeda fighters.

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. The decision made the already successful Rendition Program even more effective.

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

First, 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.

Second, 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 a very successful and security enhancing U.S. Government counterterrorist operation when their European Union presides over the earth's single largest terrorist safe haven, and has done so for a quarter century. The EU's policy of easily obtainable political asylum and its prohibition against deporting wanted or convicted terrorists to a country with a death penalty have made Europe a major, consistent and invulnerable source of terrorist threat to the United States.

Third, 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 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 was insufficient, the lawyers disapproved and no operation was conducted until that target—against that target rather 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, guess, or caprice. These are scurrilous accusations that became fashionable after the *Washington Post* correspondent, Dana Priest, revealed information that damaged U.S. national security and, as a 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 their government's Rendition Program.

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 or 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 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 a much more dilapidated shape than I thought.

Fifth, 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. 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.

Sixth, finally, I will close by saying that mistakes may well have been made during my tenure as the chief of CIA's bin Laden's operations; and if they were, they are my responsibility. Intelligence information is not the equivalent of courtroom 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 airtight.

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 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 that protection. If the Rendition Program is halted, we will truly be able to say, by paraphrasing the late John Wayne, that war is tough, and it is a lot tougher if you are deliberately stupid.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Scheuer follows:]

PREPARED STATEMENT OF MR. MICHAEL F. SCHEUER, FORMER CHIEF, BIN LADEN
UNIT, CENTRAL INTELLIGENCE AGENCY

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 the 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. DELAHUNT. Well, thank you, Mr. Scheuer and Ms. Smith.

So we have a situation where you accused the Swedes of lying and the Italians of lying.

Mr. SCHEUER. Absolutely, sir.

Mr. DELAHUNT. And we know that Clinton lied.

Mr. SCHEUER. He is a convicted liar, sir.

Mr. DELAHUNT. And Berger lied.

Mr. SCHEUER. He is a convicted felon, sir.

Mr. DELAHUNT. And who is the other individual?

Mr. SCHEUER. Mr. Clarke. Yes, sir. He hasn't been convicted yet.

Mr. DELAHUNT. Okay.

Very interesting. And the media—the media is aiding and abetting.

Mr. SCHEUER. Without question, sir.

Mr. DELAHUNT. And you believe that the——

VOICE. If you allow me, I can testify regarding——

Mr. DELAHUNT. I don't want to have to ask you to leave. Any further interruptions, you are going to be asked to leave. We are going to have an orderly hearing at this point in time.

Actually, you believe that the Islamic media is an improvement over the western media, is that correct?

Mr. SCHEUER. No, sir. It is not correct at all.

What I have said, though, is that we never had an enemy who is more concerned with us knowing what he is going to do, why he is going to do it, and how long it is going to continue and we continue to behave as if the enemy doesn't exist or is somehow a minor force in the world, sir.

Mr. DELAHUNT. Well, in one of your books, *The Eyes of Our Enemy*, you said that “based on my research, it is apparent that the Islamic media correspondents and editors work harder——”

Mr. SCHEUER. Absolutely, sir.

Mr. DELAHUNT [continuing]. “Dig deeper.”

Mr. SCHEUER. Yes, sir.

Mr. DELAHUNT [continuing]. “And think more.”

Mr. SCHEUER. Absolutely, sir.

Mr. DELAHUNT [continuing]. “Than most of their Western counterparts.”

Mr. SCHEUER. Certainly on the issue of Osama bin Laden that is exactly correct, sir.

Mr. DELAHUNT. When you seized individuals in Europe or elsewhere outside of Afghanistan and Iraq and either held them or transferred them to another country, did you understand that there was legal authority permitting such seizures or captures——

Mr. SCHEUER. Of course, sir.

Mr. DELAHUNT [continuing]. Apart from the legality of the rendition of transfer?

Mr. SCHEUER. You know, I was born at night but not last night, sir. There is no operation at the CIA that is conducted without approval of lawyers. It is the bane of our existence, and it is a detriment to the defense of America, but, nonetheless, that is the fact.

I don't get paid—I didn't get paid to make legal decisions. I got paid to protect Americans. And as long as the lawyers signed off, it got done. And I have to say again, no rendered al-Qaeda leader has ever been kidnapped by the United States. They have always first been either arrested or seized by a local security or intelligence service.

Mr. DELAHUNT. Did the analysis that such seizures were legal include a legal assessment that the individuals being seized were unlawful enemy combatants?

Mr. SCHEUER. I neither know nor care, sir. That is not my concern. My concern is to identify enemies to America.

Mr. DELAHUNT. So you don't know?

Mr. SCHEUER. I know there was much more consideration under the Bush administration about how to handle these people than there was under the Clinton administration, sir. There were no qualms at all about sending people to Cairo and kind of joking up our sleeves about what would happen to those people in Cairo in Egyptian prisons, sir. And the CIA was very much forthright in telling the administration that because we knew that we would get to this point in time where no one is going to sign up for what they ordered us to do sir.

Mr. DELAHUNT. Well, you indicate that the purpose of the Rendition Program was to remove these enemies——

Mr. SCHEUER. Yes, sir.

Mr. DELAHUNT [continuing]. So that they were no longer in a position to attack the United States——

Mr. SCHEUER. Yes, sir.

Mr. DELAHUNT [continuing]. Or our citizens. And secondly was to seize their documents.

Mr. SCHEUER. Yes, sir.

Mr. DELAHUNT. But I think that you would agree with others that have testified here today or we heard from today that the interrogation of those individuals was really not a priority.

Mr. SCHEUER. The interrogation was not a priority. That is exactly correct, sir.

Mr. DELAHUNT. Then why—why would we send them to foreign——

Mr. SCHEUER. You have to ask Mr. Clinton and Mr. Berger for the great bulk of this, sir. The Agency's position was always that we would prefer not to either hold them ourselves or give them to other people, but Mr. Berger and Mr. Clarke Mr. Clinton——

Mr. DELAHUNT. You are under orders to remove them from other——

Mr. SCHEUER. Sir, a half-assed bureaucrat like me is not going to take any prisoner anywhere in this world without the authority of the executive branch.

Mr. DELAHUNT. But there was another interesting statement that I read that is attributed to you. And again we are talking about, you know, secret prisons, you know, renditing to other nations where——

Mr. SCHEUER. Sir, I have never talked about secret prisons, because that is a leak of classified information, sir.

Mr. DELAHUNT. I stand corrected, but one where you—and I am looking for the quote now—where you indicated that, as far as you

were concerned, or senior CIA officers, you would have—that in your judgment, in your assessment, they would have preferred to return those that were seized to the United States.

Mr. SCHEUER. I think absolutely, sir; and probably not from any altruistic reason at all but simply because we knew we would get to the point where we are today, where you and some Members of this Congress behave as if CIA is a rogue organization, rather than a service organization servicing the President and the Congress and all branches of the United States Government.

Mr. DELAHUNT. This was a statement again that was attributed to you on *Frontline*: “Now I think that agency officers would prefer to see these people treated as POWs——”

Mr. SCHEUER. Yes, sir.

Mr. DELAHUNT [continuing]. “Because the results of interrogation are not monumentally important.”

Mr. SCHEUER. In very rare cases it is very important, sir. The point of fact is that POW is the best status you can give these people. Throw them in a stockade, let the Red Cross bring them cookies, let them write their Mama. But the big problem you have, sir, in the future, you and the Europeans and the Americans, is these people can never be released. No matter what kind of due process you install, these people are in there forever when they are the hard core——

Mr. DELAHUNT. Again, let me just finish the quote:

“If they were treated as we treated Japanese POWs and German POWs, let the Red Cross come in and see them in their little stockades, I think we would be better off.”

Mr. SCHEUER. I think we would, too, sir.

Mr. DELAHUNT. I don't disagree with you. I don't think we would be here today.

Mr. SCHEUER. Well, sir, that is exactly right. But the rub comes with the release, and that is where we are going to eventually have to come down and sit down and do some hard talking, as the Europeans said, because we have had already two dozen of these people come back from Guantanamo Bay and either be killed in action against us or recaptured.

Mr. DELAHUNT. And we have had hundreds that have been released that went back and are leading peaceful lives because the——

Mr. SCHEUER. The great bulk of al-Qaeda's organization, sir, leads peaceful lives every day.

Mr. DELAHUNT. I am not talking about al-Qaeda. I am talking about people that were released from incarceration, no matter where. We have seen it in terms of Gitmo. We have seen it in terms of those that were released by the Government of Syria or after considerable pressure by the Government of Egypt. It is just not all a black-and-white situation. I have no doubt that some did return and reverted to being enemy combatants. But I do find it interesting that you, in your assessment, find that the CIA—at least this is your understanding—that the CIA would have preferred to treat those that had been seized as enemy combatants and returned to the United States and provided, as you say, with cookies and letters from mom or dad and——

Mr. SCHEUER. Let's be clear—

Mr. DELAHUNT [continuing]. And then have had access to the International Red Cross.

Mr. SCHEUER. Let's be clear, Mr. Chairman. The only reason we would have preferred that is because we knew we were going to get hung out to dry at the end of the day. No one really cares what happens to these people—let me speak for myself.

Mr. DELAHUNT. All what people?

Mr. SCHEUER. I don't care what happens to the people who are targeted and rendered. We wouldn't be operating against them unless they were enemies of the United States.

Mr. DELAHUNT. What about those that clearly eventually were determined to be innocent?

Mr. SCHEUER. Mistakes are made, sir.

Mr. DELAHUNT. Mistakes are made.

Mr. SCHEUER. And if you can prove that there was not due diligence in designing the target package or assembling the information that caused that operation to go forward, then you have a case against someone. Otherwise, it is a mistake.

Mr. DELAHUNT. It is just a mistake.

Mr. SCHEUER. Yes, sir. They are not Americans. I really don't care.

Mr. DELAHUNT. And if they were not Americans you don't care. That is very interesting.

Mr. SCHEUER. I never got paid, sir, to be a citizen of the world. Maybe you do.

Mr. DELAHUNT. I am not paid to become a citizen of the world. I am paid to represent the people in my particular district and to represent the American people writ large and to respect the Constitution and understand that America has justifiably a certain claim to moral authority. And we do care. That is why I am paid.

And, with that, I will yield to the gentleman from California.

Mr. ROHRBACHER. Today, I have been called Adolph Eichmann. I am the Adolph Eichmann, of course; and my father, who went out to fight World War II and save our European friends, I guess he was part of the Eichmann brigade. And all Americans—and of course we have heard that the American Revolution we were in some way had some kind of moral equivalency to al-Qaeda because it was a vicious civil war. I don't remember, of course, Americans going over to Great Britain and trying to bomb the Parliament, but we might have. It is conceivable. I don't think we did.

Let me suggest that I appreciate both of your testimony today; and, Mr. Scheuer, I respect you a great deal. You are very frank. You are not trying to hide your opinions that you know and sugarcoat your positions so that people cannot come back and attack you. You are making yourself very clear that you are someone who is trying to protect my children.

I have three children at home. They are going to be 3 years old in about 2 weeks. And what you are saying is that your number one goal in life was to protect my children, protect the children perhaps of our friends in England, too, but, first and foremost, to make sure that American kids and American people are safe.

And there is no—obviously, Mr. Chairman, in my parents' generation, there were lots of mistakes that were made in World War

II. I guess Winston Churchill didn't make any mistakes that resulted in some people's death. I guess FDR never made any mistakes in World War II. Because, if they had, then they would be the bad guys. They would be the moral equivalent of the bad guys that we are trying to get.

I think it is very clear that any mistakes that are made in harming or arresting a person who is a Muslim, for example, who has the same name as a terrorist, I do not put that on a list of atrocities. I put that on a list of mistakes. And, as the witness suggested, that all that should indicate is that we should spend a lot more time and make sure that mistakes are not made but not that that in some way diminishes the role of a program that perhaps has prevented and—and there is lots of evidence that suggests that it has prevented evil individuals who would have done harm to large numbers of Americans from being able to do that. And to the degree that it can be done effectively so that they are very few people who are picked up by mistakes, we should all do that. And I am sure you agree with that, don't you, Mr. Scheuer?

Mr. SCHEUER. It is a very difficult thing for the Agency to do, simply because we have so little manpower. It is very labor-intensive to hold people. The great bulk of people, of course, are not held by the CIA but by the FBI or the military. But it is a worthwhile endeavor. It is an endeavor which has saved lives, unquestionably. And it is an endeavor which the officers who risk their lives for deserve to be complimented for.

Mr. ROHRABACHER. If somebody were to set off a dirty bomb in New York or in Boston Harbor or in Los Angeles Long Beach Harbor, which is very near to where I live, there would be millions of Americans whose lives would be lost. To the degree that there have been mistakes made and that individuals perhaps have suffered who should not have suffered, who are not at all involved in al-Qaeda, if you could guesstimate for me how many people we are talking about—are we talking about 10 people? Are we talking about 20 people? 100?

Mr. SCHEUER. Mistakes that were made?

Mr. ROHRABACHER. Mistakes that you might say, in looking back, this person really got—his name is the same guy as that name of the guy in al-Qaeda and he was in the prison system for 2 years or 1 year or 6 months. How many guys like that do we have? How many are we talking about?

Mr. SCHEUER. I can only tell you what I have read in the paper, and I think it is three.

Mr. ROHRABACHER. Three. I don't know how many are estimated by our European friends, but I will be happy to ask them after this hearing and insert it into the record as to what their estimates are as to number of people who were mistakenly apprehended.

Now you are saying when people are seized and transferred to other countries that this was always done under the consultation, cooperation and direction of the foreign governments in which that incident occurred, is that correct?

Mr. SCHEUER. There was very few cases of operations in Europe, sir. Any operation in Europe was done with the cognizance, support and approval of the European security services involved.

Mr. ROHRABACHER. So do you know of any incidents where, in Europe, the United States Government did not in any way consult with the home government when a seizure of an al-Qaeda suspect was made?

Mr. SCHEUER. To my knowledge, sir, none.

Mr. ROHRABACHER. All right. None. And I would imagine that there are some examples, but they probably—but those examples may well be, Mr. Chairman, not examples of where we did not consult with the government but where, instead, the foreign government does not have the courage for which to be frank and honest in their discussions with their own citizens.

Mr. SCHEUER. Or their own Parliament.

Mr. ROHRABACHER. Or their own Parliament. But that is their problem.

Mr. DELAHUNT. I suggest it has been our problem, too, hasn't it?

Mr. ROHRABACHER. Let me note this. The chairman has heard my support for the concept of this hearing, and let me also note that I believe that this type of discourse and discussion keeps people honest in our society. And whether or not I agree with you or any of the other people who are on the other side, I have no doubt that those people in the field, whether it is the CIA or other type of operations, will be much more aggressive in their efforts to make sure they are not making mistakes, to make sure they are not making mistakes, to try to do what is right or try not to be frivolous about making decisions about who they are going to pick up.

You are suggesting that in your understanding, from what you have seen, never was there someone picked up simply because they say this guy must be part of it and it was just on a hunch.

Mr. SCHEUER. That never happened, sir. That only happens in Dana Priest's articles.

Mr. ROHRABACHER. And you also know of several dozen—two dozen examples where terrorists were let go from captivity and went back to attack us again?

Mr. SCHEUER. I have read that in the media, sir, mostly to do with people who were seized in Afghanistan, taken to Guantanamo and then were released and came back to fight us a second time.

Mr. ROHRABACHER. Let us note that what seems to be bothering our European friends, Abu Ghraib and the prisoners that you just mentioned—and I read the cases of several of these prisoners who were arrested in Afghanistan. Not Afghanis. We are talking about foreign nationals who went to Afghanistan during the time of the Taliban to work with al-Qaeda and be trained as terrorists in that country. Those people who were apprehended, those are the people who are in Abu Ghraib. In Abu Ghraib, we don't have Afghans, is that right?

Mr. SCHEUER. I don't know the answer to that.

Mr. ROHRABACHER. That is correct. There are no Afghans in Abu—excuse me, Guantanamo.

Mr. DELAHUNT. I want to note that you answered your own question, Mr. Rohrabacher.

Mr. ROHRABACHER. I did. In Guantanamo, the prisoners in Guantanamo are not Afghanis, but they are foreign nationals who were arrested in Guantanamo. Your point about—you made another

point about you don't care, these terrorists, rot in prison, you don't care.

Mr. SCHEUER. I don't, sir, no.

Mr. ROHRABACHER. Thank you. I don't either.

And let me just note this. What you have stated is the fact is that we are not going to execute them. Our European friends have something against the death penalty even for mass murderers, even for the Eichmanns of the world. I have been called Eichmann today, so I thought I would be use that. The fact is that we—

Mr. DELAHUNT. I just want to note for the record, Mr. Rohrabacher, that we had that person removed.

Mr. ROHRABACHER. All right. Thank you very much.

Let me note this, that in World War II, when we captured people who were part of an army that was aimed at destroying England and destroying the United States, whether it was the Japanese army or the Nazi army, that when the war was over, yes, they were released. We were at war with the nation state, and at that time those people decided that their country was not longer at war with us and they could be released. We also executed—executed war criminals.

Today, our European friends who are criticizing us oppose the death penalty, oppose those type of executions. Yet, at the same time, when we are trying to maintain the imprisonment of people who are absolute terrorists, people who are engaged, not a mistake, they are clearly—they are clearly terrorists, that we are then being scrutinized and called to task about our treatment of these people while in prison.

And I might add that the treatment of Guantanamo—and might I ask our other witness, is it not true that Guantanamo has been inspected by Amnesty International and a plethora of human rights organizations and not found to be inhumane in its conditions?

Ms. SMITH. Thank you very much, sir. Unfortunately, I am not an expert on Guantanamo; and I prefer not to comment on that.

I would like to make, however, one point. I think to your question about whether or not it matters when folks in the United States say we just don't care how these suspects are treated, I would argue that, in fact, it does matter. I think it matters very much not only to our European allies but also to other countries around the world, countries that are working very closely with the United States.

I think many of these countries that argue that—statements like that are extremely hypocritical, and I think they also cast a very dark shadow on our image in the world. I think the United States has to hold itself to a certain higher standard. And the truth of the matter is, with Europeans in particular, we have done so much good work with our European allies. Let's not forget about that. Let's not forget about all the terror suspects who have been arrested, killed, captured, all the efforts we have undertaken together to halt recruitment, all of the attacks that we have thwarted together.

But what happens when we say things like that, that in fact we don't care how people are treated, at the end of the day it makes it very difficult for these countries to stand shoulder to shoulder with us.

We need Europe's help right now. And you know what? In my opinion, we need more European help. We need European help in Afghanistan. We need European help in Iraq, frankly. But it is very hard for somebody like me and others in the government to go to Europe hat in hand to say, please, do more with the United States when we have folks also on this side of the Atlantic saying and, no, by the way, we don't care how people are treated when they are interrogated.

Mr. ROHRBACHER. Are you married and have a family? I am married. My family is the number one consideration. If you are not, you have a mother and father that you care about as well, whatever that situation is. The fact is that our families mean something to us and, frankly, this gentleman is protecting our families.

This guy said this is our number one goal, and I don't care if—how some terrorists who would murder our families are treated. I don't care. And, frankly, he is trying to do his very best and these people involved in this operation are doing their very best not to waste their time incarcerating or interrogating or punishing or hurting someone who is not involved in a terrorist operation. They don't want to waste their time, because they know that takes away from time in catching somebody who does want to hurt our families.

They may make a mistake every now and then. But my sympathy is totally with that; and if it hurts our European allies, their sensitivities, it seems here from what has been said what we really have to be concerned about is we have lost our credibility with the Europeans.

I don't believe—I just came back from Kosovo 2 nights ago. Fifteen hundred Americans are still there. The enemy was Serbian terrorists who were slaughtering thousands and thousands of civilians. I might add that the civilians who they were slaughtering were Muslims, and those who were doing the slaughtering called themselves Christians.

Now we intervened and we have been there 15 years. But that would have not have been confronted had we left it to our European allies. The Europeans always seem to have to wait for us to be the ones who take the tough stand and then will always try to find fault in certain mistakes that we made along the way.

So I would be very—and I will just end with saying that. Mr. Scheuer, thank you for your great work in protecting my children, the children of America, and—

Mr. DELAHUNT. Dana, don't leave. We are going to have a second round. But I would like to go to Mr. Flake. We are running out of time, and if we can get through one round we will stay here until midnight, Mr. Scheuer. We can really have a go at it. Mr. Flake.

Mr. FLAKE. Thank you. This has been illuminating.

Mr. Scheuer, do you believe that we can win this war on our own?

Mr. SCHEUER. Yes, sir.

Mr. FLAKE. The Americans?

Mr. SCHEUER. Yes, sir. I believe Americans can do anything, sir.

Mr. FLAKE. Without the assistance of Europe?

Mr. SCHEUER. Europe is a declining continent. Its demographics are going over the edge. There are two popular and permitted big-

otries in Europe, anti-Americanism and anti-Roman Catholicism. It is even today—

Mr. FLAKE. I think you would concede that, if they might be declining, they are going to be around for a while.

Mr. SCHEUER. They may be, sir. They may not be.

Mr. FLAKE. Well, while they are, while they are, do you look to balance at all, if your main goal—and I understand your main goal is to protect me and my children.

Mr. SCHEUER. More selfishly, sir, my grandchildren.

Mr. FLAKE. Good. But if that is your goal, do you at the CIA try to balance it all, what the best means to do that should be? Should it be with cooperation with our allies or to go it alone?

Mr. SCHEUER. If they were willing to cooperate, sir, absolutely. But we cannot put up—we cannot cooperate very effectively with a continent who allows terrorists, either wanted or convicted, to have residency and live on the dole and refuse to send them back to countries simply because there is the death penalty. There is a very vibrant cooperation with Europe, but it is very limited.

Mr. FLAKE. Ms. Smith, have we received cooperation? Was there not an incident just a while ago where Europe was quite helpful with regard to suspected terrorists flying over here?

Ms. SMITH. Absolutely. I mean, there is certainly not enough time today to cite all of the concrete examples where we are working with our European allies, not just with the traditional nuts and bolts of counterterrorism, law enforcement, terrorist financing, intel sharing, but I would note also that Europeans, despite the image they might have on this side of the Atlantic, are contributing to current missions, for example, in Afghanistan. I could argue they could do much more, but we cannot neglect the fact that they have been very strong partners of the United States, particularly over the last 6 years.

Mr. FLAKE. Great. Mr. Scheuer, you mention that everyone that you proposed for rendition, that you have evidence or had more than a hunch or whatever, were there any disapproved, anyone that you brought before the authorities?

Mr. SCHEUER. I think there were, sir. And we would have to go back and try to gather more information either from our own sources or from other liaison services.

Mr. FLAKE. So you brought people that in the end were probably turned down that weren't candidates for—

Mr. SCHEUER. I think, sir, that we were eventually able to prove to the satisfaction of the legal authorities that most of the people that we suggested deserved to be targets.

Mr. FLAKE. Well, I just—I don't want to take too much time. I know Mr. Nadler wants to question. But I appreciate our European allies for the help that they have given. And I think it has been substantial, and I worry that the perception might be that we are too willing to go extraditiously and around the system, and I think that is concerning. I don't think that we can win this war on our own or that we could. But I don't think we can. So I think it is important that with the ultimate goal in mind, that we strike a balance.

Mr. SCHEUER. I don't disagree with that at all, Congressman. I think the question is will we have to win it alone or not.

Mr. FLAKE. And with regard to whether we care if terrorists rot in jail, I don't think anybody here cares if terrorists rot in jail. But I think we do have an interest in ensuring that it is terrorists who rot in jail and that we have due process to the extent that we can determine that. So anyway, I appreciate the testimony.

Mr. DELAHUNT. I thank the gentleman from Arizona. And just so that Dr. Scheuer and Ms. Smith thinks I am kind of a weak kneed fuzzy wuzzy, you know, let mummy make cookies for me, in my previous career I was a district attorney, and I put an awful lot of people in jail, Mr. Scheuer. I can assure you some are there for life, and they belong there. But I think that what Mr. Flake just said is so important. We want to make sure they are the right people that are there because otherwise we erode not just the opinion of the world in terms of who we are, but we erode the confidence of the American people and the integrity of what we are about.

With that, I will yield to the gentleman from New York, Mr. Nadler.

Mr. NADLER. I thank the chairman. Dr. Scheuer, I have been listening to your testimony, and I have read a thick stack of quotes from you and frankly about you, and I find myself in profound disagreement with some of the quotes and in profound agreement with others of the quotes. And I view some of what you said about Europe, about its decline, about some of the fecklessness and other things.

Having said all that, I want to explore some things with you. Nobody here cares about a terrorist rotting in jail, but let's go back to the beginning. You said that under rendition no one was ever kidnapped.

Mr. SCHEUER. Yes, sir.

Mr. NADLER. What do you mean by that? Let me just—how do you define a rendition as opposed to a kidnapping?

Mr. SCHEUER. I don't, sir. Lawyers do.

Mr. NADLER. No, no. When you say they weren't kidnapped, what do you mean didn't happen?

Mr. SCHEUER. I would assume that no government U.S. lawyer would allow us to kidnap anyone, sir. And again, we never seized anyone.

Mr. NADLER. Well, one of the problems with that is that, as we are finding out with the FISA and the NSA, as we are finding out with the U.S. attorneys, as we are finding out a lot of things that are coming out, lawyers will say a lot of things. It doesn't make them right.

Mr. SCHEUER. It isn't my concern though, sir.

Mr. NADLER. All right. Let's come back then. So the lawyers—so how do you define rendition? The United States simply decides, with good information presumably, that Joe Blow is an al-Qaeda agent, and therefore what?

Mr. SCHEUER. Under Mr. Clinton, we focused on those members of al-Qaeda who were senior in the leadership.

Mr. NADLER. But what did we do, is my question.

Mr. SCHEUER. What did we do?

Mr. NADLER. Yeah.

Mr. SCHEUER. We gathered the information; we focused on senior members and then followed the direction of the President.

Mr. NADLER. Which was to——

Mr. SCHEUER. Which was to arrange for the security or intelligence service in Country A to arrest those persons.

Mr. NADLER. Under Clinton, we arranged for Country A to arrest them, presumably follow their processes or whatever they may be.

Mr. SCHEUER. On the basis of the outstanding——

Mr. NADLER. In effect, under Clinton, we simply advised the foreign country, and they did what they wanted to do?

Mr. SCHEUER. That is correct.

Mr. NADLER. And under Bush?

Mr. SCHEUER. For the most part Mr. Bush has held people under our own.

Mr. NADLER. No, no. He has held them, but how did he get them? In other words, under Bush we will determine that Joe Blow is a dangerous senior al-Qaeda and we direct the CIA to go and seize him?

Mr. SCHEUER. No, sir. For the most part, and I resigned in November 2004.

Mr. NADLER. Well, that is 4 years into it.

Mr. SCHEUER. Most of the al-Qaeda people who have been captured were captured by the action of the Pakistani——

Mr. NADLER. That wasn't rendition, was it? That is how they got to Guantanamo.

Mr. SCHEUER. I frankly don't know, sir. There has never been anything in the United States Government that has been identified as an extraordinary rendition.

Mr. NADLER. Well, let's talk for a moment about the Arar case then for an example. Now Mr. Arar is a Canadian citizen with dual Syrian nationality. As I read the story, on the way home from Tunisia—on the way from Tunisia to Canada, changing planes at Kennedy airport. We had information from the Royal Canadian Mounted Police which we believed, which they now say is mistaken but let's forget that for a moment. Let's assume that we thought it was accurate, and let's assume it had been accurate. The CIA, if I get the story, simply seized him at Kennedy airport.

Mr. SCHEUER. No, sir. That is probably not correct.

Mr. NADLER. What is correct?

Mr. SCHEUER. I don't think the CIA has the authority——

Mr. NADLER. Well, then who seized him?

Mr. SCHEUER. Probably the FBI or the immigration people, sir.

Mr. NADLER. Okay. So the FBI—I'm sorry. Fine. So the FBI seized him and put him on a plane bound for Syria. And that is what we call extraordinary rendition.

Mr. SCHEUER. I don't call it that, sir.

Mr. NADLER. That is what is referred to—well, we have to get some definitions. That is what most people refer to, are thinking about when they talk about rendition. That is the most famous case of it.

Mr. SCHEUER. Well, it is an average case of it I guess except the only unusual part was that he was in the United States. Whether you think he is in our territory or not——

Mr. NADLER. Okay. So under the Bush practice then, if Mr. Arar had been in France under Clinton, we would have advised the French, and they would have done whatever they wanted to do.

Mr. SCHEUER. Right.

Mr. NADLER. Under Bush, we would have had the CIA seize him?

Mr. SCHEUER. No, sir.

Mr. NADLER. What would we have done?

Mr. SCHEUER. The same deal.

Mr. NADLER. We would have advised the French?

Mr. SCHEUER. We would advise the French and if they would have arrested him, we would have assisted in facilitating his move to the country where he was wanted.

Mr. NADLER. Why would they need our help to move him to wherever they wanted him to?

Mr. SCHEUER. Sir—

Mr. NADLER. If the French wanted to move him somewhere, why would they need our help to do that?

Mr. SCHEUER. They probably wouldn't in an ideal world. But the problem with Europe, sir, is they don't want to help.

Mr. NADLER. But if all we are doing is advising the French Government, and the French Government didn't want to help, then we are wasting our time.

Mr. SCHEUER. Yes, sir. That is correct. And that has happened numerous times.

Mr. NADLER. So then the rendition didn't occur in those instances?

Mr. SCHEUER. Very few operations of any kind, of a unilateral kind occur in Europe, sir.

Mr. NADLER. Okay. And let's assume we were in some Asian country.

Mr. SCHEUER. Yes, sir.

Mr. NADLER. What would happen?

Mr. SCHEUER. We would contact the local service and ask them to arrest—

Mr. NADLER. Local service, meaning the foreign government?

Mr. SCHEUER. Yes, sir. And ask the person to be arrested. Then they would be moved either—under Mr. Bush, probably into our custody. And Mr. Clinton, we would have had to find a person who was wanted by an outstanding legal process somewhere in the world.

Mr. NADLER. Okay. And in the midst of Bush then, we would have advised the Government of Blovistan, not to implicate anybody in particular, and the Blovistani Government would have then handed him over to us and we would have put him in either some place that we can't mention or perhaps in Guantanamo.

Mr. SCHEUER. He would have been held in exactly the place the executive branch ordered us to.

Mr. NADLER. Wherever that was.

Mr. SCHEUER. Yes, sir.

Mr. NADLER. Now, it is true, and Mr. Flake alluded to it, none of us care about the sensibilities of wanted terrorists. Not wanted, but of real terrorists obviously. We want them off the street, et cetera, et cetera. On the other hand, it seems to me that the basic problem is that it is one thing when we are fighting the Japanese or the imperial German Government or the Nazis and the enemy is in uniform. And if someone is captured in arms, in uniform, you can put them in a POW camp and keep them there until the war

is over. For that matter, if we are fighting the Taliban in Afghanistan, and someone is captured in a firefight holding an AK-47, you could probably do the same thing, and put him in a POW camp. But in the so-called war on terrorism—and I say so-called for a number of reasons, which I may get to if we have enough time—but in the war on terrorism, as you pointed out before, there is no enemy country, there is no army in uniform. So if we pick somebody up, we may have information that says that this guy—and we pick him up and let's say—for that matter, let's say the warlord picks him up, and the warlord gives him to us because we are paying bounties because—and we have good motives to pay bounties. We want these al-Qaeda guys handed over to us but of course they hand over whoever they happen to pick up, including the guy from the wrong clan. So somebody gives him to us, and we have information that this guy is, in fact, an al-Qaeda agent, but that information could be right or wrong. Is your testimony that—and again, we are going to put him in a jail, in Guantanamo let's say, and we are going to hold him there forever. But we don't really know—in a given case we may, but in many cases we don't really know if this is in fact an enemy combatant. He may be someone who is in the wrong place at the wrong time. Don't you think it is necessary in terms of—yes, we want to protect ourselves. But in terms of American ideals that there be some sort of real due process to separate out the people that George Bush or somebody else or the FBI agent may think is an enemy combatant or may think is a terrorist and someone where they may be mistaken?

Mr. SCHEUER. I am sure that is a requirement, sir. But it is none of my concern. My job is to find the enemy and arrange to get them off the street. It is up to the—

Mr. NADLER. All right. Okay. But my concern is that this whole rendition process and this whole Guantanamo process and this whole keeping people in secret prisons process, by definition is holding people who someone has some reason to believe is a terrorist or maybe just someone who is given to us and we don't know—because the guy who gave him to us is a friend of ours and supplying a lot of fighters in Waziristan, but we have no real mechanism that we would stand up and defend in this country to determine whether that is correct or not.

Mr. SCHEUER. I think you have stumbled onto a very good point, sir, and Mr. Rohrabacher mentioned it earlier. We are not in the business of annihilating the imperial Japanese army. We are in the business of preemption. And if you look at the cases in New York that have worked for the FBI, they were mostly conducted under a conspiracy law from the Civil War. That is very hard to do.

Mr. NADLER. But it is one thing to conduct something under conspiracy law where you still have to prove something in a court. Now, my question is, in a POW situation you are not convicting somebody of a crime. You are simply saying they are an enemy combatant, and you put them in jail, you put them in a POW camp until the war is over. We however—number one, we don't know who we are fighting. I mean, we are fighting a hydra-headed conspiracy as you put it. Al-Qaeda is morphing all over the place. There is no one who can sign a surrender document if such existed. There is no situation which you are ever going to release combat-

ants. The Padilla case, for example. He is on trial for various crimes. If he is convicted, he will deservedly go to jail for those crimes. If he is not convicted, he could be kept in jail anyway.

Mr. SCHEUER. Yes, sir.

Mr. NADLER. Well, how can we have such a situation where someone can be kept in jail forever without ever being accused of a crime and not being a POW?

Mr. SCHEUER. It is a very hard world, sir, but you have hit on the key to it. We are not involved in a war on terrorism. If these were terrorists, we would have annihilated them long ago. We are more or less fighting an insurgency that is worldwide and these are military people that we are fighting.

Mr. NADLER. Some of them are. The problem is some of them may not be.

Mr. SCHEUER. Yes, sir. There are all kinds of problems out there. But—

Mr. NADLER. My whole point is, I understand when you say mistakes are made. Of course mistakes are made. People are fallible. No matter how many protections are put in place, mistakes will be made. But it seems to me we have an obligation as a civilized country who believes in due process to put into place some process to minimize—that that is a public judicial process to minimize those mistakes.

Mr. SCHEUER. We do have that responsibility, sir. I do not.

Mr. NADLER. You personally, that is correct.

Mr. DELAHUNT. If the gentleman would yield, I think, Mr. Scheuer, that was a very apropos response. And I think that it is our duty to come up with a mechanism to avoid that particular conundrum. But we are joined by my colleague from Massachusetts, Mr. Markey. If there is no objection from my ranking member—

Mr. ROHRABACHER. There is no objection.

Mr. DELAHUNT. Then maybe he can inquire. But before I come to him so he can gather his thoughts, I don't want to leave the impression that you and Dr. Scheuer agree on everything. And I would try to bring Ms. Smith into this I think very interesting conversation that we are having.

I read excerpts of your book, *Imperial Hubris*, and I was really taken by, again, your bluntness and your candor about the war in Iraq. And correct me if I misquote you, but this is what I saw referring to the Iraq war: "It was an avaricious, premeditated, unprovoked war against a foe who posed no immediate threat, but where defeat did offer economic advantages." Yeah, where "defeat of" being Saddam Hussein. Am I misquoting?

Mr. SCHEUER. No, sir. That is exactly correct.

Mr. ROHRABACHER. Mr. Chairman, that should give him credibility in your eyes.

Mr. SCHEUER. If you read on further, sir, I say part of the problem is that the Congress has unilaterally abdicated its responsibility to declare war.

Mr. DELAHUNT. I don't disagree with you. I am not—

Mr. SCHEUER. It is not solely against the Bush administration, sir.

Mr. DELAHUNT. Listen, and I don't want anyone to leave with the impression that you only have issues or criticize Democrats because your criticism is rather broad.

Mr. SCHEUER. Very catholic, sir.

Mr. DELAHUNT. You are very catholic. I am much that way myself.

“The U.S. gadfly ambassador in Kabul, Zalmay Khalilzad, who is now on his way to Iraq to replicate the disaster he created in Afghanistan.”

That is a quote that is attributed to you.

Mr. SCHEUER. Yes, sir. That is a correct quote.

Mr. DELAHUNT. And John O'Neill, who was the FBI Chief of Counterterrorism, you had this to say about him: “Mr. O'Neill was interested only in furthering his career in disguising the rank incompetence of senior FBI leaders.”

Mr. SCHEUER. Yes, sir. I think I also said that the only good thing that happened to America on 11 September was that the building fell on him, sir.

Mr. DELAHUNT. Okay.

Mr. ROHRABACHER. Mr. Chairman, just if I could—

Mr. DELAHUNT. You know, I am not going to—I am going to keep my time here. You know, you are really tough on Senator McCain.

Mr. SCHEUER. Sir, he is a perfect example of a man who is tremendously courageous and has a lot of patriotism but not necessarily correlation with brain power, sir.

Mr. DELAHUNT. Well, you said this about him: “The Senate is no torture campaign, reveals him for what he is, a little man with mediocre intelligence, a taste for bullying, and an appalling temper who thinks the presidency is his birthright.”

Mr. SCHEUER. Yes, sir.

Mr. DELAHUNT. Um, you certainly don't like Dana Priest.

Mr. SCHEUER. Sir, I don't like anyone that endangers my grandchildren, sir. And she called me both on CIA aircraft wanting me to give her numbers of their registration and called and asked me to identify what she called CIA prisons overseas. I refused to do both, and I advised her that under normal circumstances a CIA officer who revealed those things would be in prison.

Mr. DELAHUNT. What I did find—what I did find interesting—and I agree with you—I think we have targeted the wrong enemy or have been diverted from our efforts against terrorism. And I think we have misled ourselves and misled the American people when we talk about Osama bin Laden in a way that doesn't afford him those attributes that make him so dangerous to us. You know, we talk—we get lost about Saddam Hussein. We have created in my judgment a spawning—a training ground for those terrorists that would do us harm. And I guess, how do we, in your judgment—well, first of all let me ask you this. I thought it was very interesting—we are talking about opinion, for example. And you know, we continue to hear from this President—and try to take this in a way that I am not making this a partisan attack. But I think you are so right when you say when we just simply suggest that they hate us because of our values, we miss something. They

don't hate us, according to you, because of our values, but because of our policies in the Middle East. Is that—

Mr. SCHEUER. And their impact. Yes, sir.

Mr. DELAHUNT. And their impact. What policies in particular do you think that we as a Congress should examine to diffuse and eliminate and eradicate terrorism?

Mr. SCHEUER. I don't think you should reconsider any policy to diffuse or eradicate terrorism unless it is in the interest of the United States.

Mr. DELAHUNT. I understand that. But what policies are—

Mr. SCHEUER. I need to be very clear. Unqualified support for Israel, our ability at least until recently to limit the price of petroleum, our support for states who are deemed oppressors of Muslims throughout the world, especially Russia, China and India, our present civilian and military on the Arabian Peninsula, our military presence elsewhere in the Islamic world and probably, most damagingly, 50 years of support for Arab tyranny around the world in which our European—

Mr. DELAHUNT. You made a very interesting comment, too, about when we talk about those who consider Osama bin Laden an iconic figure, they don't necessarily hate freedom but what they see through their eyes is his resistance to the government, if you will, of Saudi Arabia which you characterized as a tyranny.

Mr. SCHEUER. Well, I think, sir, of all the things I have said today, defining the Saudis as tyrants is a pretty solid definition. I think—I would back away from having you listen to me on this point and simply look at the polls that have been conducted in the Islamic world over the last 15 years. Inevitably, large majorities in most Muslim countries admire the way Americans live. Inevitably, in 85–90 percent rate, they hate the impact of our policies in the Islamic world.

Mr. DELAHUNT. You see we are agreeing and it is making me very nervous, Dr. Scheuer, that I am agreeing with you.

Mr. SCHEUER. I am a very reasonable guy.

Mr. DELAHUNT. I can sense that. You are very reasonable, and you are catholic. But I try to convince Mr. Rohrabacher that opinion is important because, particularly in a democracy, it should dictate eventually what the policies of whether they be Europeans or Latin Americans or Asians or Africans occur, okay? What is reflected. And I think you make a very insightful comment when you talk about the real danger being that the Muslim world begins to hate Americans rather than just America.

Mr. SCHEUER. Yes, sir, that is correct.

Mr. DELAHUNT. I think that is very, very critical. That is why people on this dais like myself are expressing concerns, not because I have a different view of the world than you do or that I embrace what I think is our core, which is the defense of human rights to the end, to go to war for that, for individual freedom and fairness and due process. Okay? It isn't just that. It is very selfish. It is selfish in the sense that if we don't—if we don't care, then that popular support that is so necessary throughout the world to defeat these people once and for all won't exist.

It is just not Europe, by the way, Dr. Scheuer. You know, Latin America. Latin America, 86 percent of a sample that was extracted

in Latin America have a negative opinion of the Bush administration. Believe me, I am not happy about that. I am not happy about that because that impacts my country. And what I am concerned about is that it will morph into a situation where we have people who begin to hate Americans as opposed to the American Government. So we are not—in some cases, we are not all that far off.

Mr. SCHEUER. I think we probably are not, sir, but I have always looked at American foreign policy as a tool for expanding liberty at home. I have never been one who believed that our particular experiment is exportable. I think there is massive silliness in believing you can put 800 years of Anglo-American political development on a CD-ROM and give it to Mr. Chalabi or Mr. Karzai and ask them to replicate it in 3 months, 3 years, or 3 decades.

Mr. DELAHUNT. Well, you know what, I sadly agree with you on that as well, although I have much more hope. I don't think we went about it the right way. I concur with President Bush in terms of the goal of bringing democracy but the era of Iraq will live with us for generations.

Ms. Smith, would you care to comment on anything?

Ms. SMITH. No. I don't want to take up too much more time. All I would say is that, you know, I would like to mention that I by no means, as much as I care about public opinion and how the world looks at us, I don't want to stand before you today and argue that rendition should disappear. I too want Americans to be safe and while I don't have children yet, sir, I hope some day to have some children and I would want them to be safe just as much as you want your own children, others' grandchildren to be safe. But I think the way in which we have handled some of these issues, which I think gets at the heart of your point, Mr. Chairman, does matter, and I do not want to see a day when we find our allies and partners working against us. That is the worst case scenario. And that is what keeps me awake at night other than the fact that we also have many people out there that would like to do great harm to this country, and I will leave it at that.

Mr. DELAHUNT. Mr. Markey, would you care to make a comment or ask a question or whatever you want to do.

Mr. MARKEY. I thank you, Mr. Chairman. This is good TV. I mean, ordinarily, you know, C-SPAN is pretty much "get-a-life" TV, but this is—

Mr. DELAHUNT. Are you speaking of Ms. Smith, Dr. Scheuer or—

Mr. MARKEY. And you.

Mr. DELAHUNT. And myself and Mr. Rohrabacher.

Mr. MARKEY. And Mr. Rohrabacher. It is a very interesting hearing. I mean really interesting. I mean oftentimes people aspire to a higher percentage of their thoughts going unspoken than this hearing has demonstrated in this case. So I congratulate you on being able to elicit that kind of testimony.

So to begin—and I thank you, Mr. Chairman, for your indulgence. Maher Arar was a resident in my district for several years, which is what drew my attention to this case 3 years ago. And now Dr. Scheuer, as you know, the Canadian Government has apologized to Maher Arar and has actually paid his family about \$10 million in compensation. Do you think the Canadian Government

has made the right decision in apologizing to Maher Arar and his family, and giving him compensation of \$10 million for engaging in extraordinary rendition, for sending him to Syria and having him tortured without due process?

Mr. SCHEUER. I would say, sir, that that is entirely the Canadian Government's decision.

Mr. MARKEY. Do you think the United States Government should apologize to Maher Arar?

Mr. SCHEUER. No, I don't.

Mr. MARKEY. So you don't agree with the Canadian Government's position?

Mr. SCHEUER. It is not my business. The Canadians can do what they want, sir. And I will tell you, if I had the same sheet of information about Maher Arar today, I would go after him again and seek legal approval.

Mr. MARKEY. So while leaving to the sovereign nation of Canada their right to whine and throw away their money, giving it to someone like Maher Arar for something that the Government of Canada has identified as a huge mistake, you would not allow the United States, even though there still is no evidence, no evidence whatsoever, and if there was evidence that evidence should be forthcoming because clearly now the United States is completely isolated. The Canadian Government, the Mounted Police, none of them have yet produced any evidence that would be used in a way that could corroborate the allegations that were made, and yet you seem to be willing to support extraordinary rendition and the torture that is almost a natural consequence of it even in cases where one of our strongest allies, and someone in a country that was supporting us in this program, has already apologized and made compensation.

Mr. SCHEUER. I think you missed part of this hearing, Mr. Markey. I have said that I personally don't think that torture is a very good idea in terms of getting information. I also said that I don't care if it happens.

Mr. MARKEY. No. I appreciate that.

Mr. SCHEUER. Yes, sir.

Mr. MARKEY. I appreciate that. You know, Wernher von Braun used to say, you know, my job is to get the missiles in the air. Where they come down is not my responsibility. And so I mean taking that approach of course has a certain exculpatory—self-exculpatory—but it doesn't in and of itself, though, deal with the essential, you know, theological question here, which is whether or not a moral wrong is being engaged in. And so if you know that Syria, that Egypt, that other countries engage in torture, the United States has captured the prisoner. We have them in our possession. You yourself have doubts as to whether or not torture does in fact elicit useful information, and we have this very valuable high profile al-Qaeda operative under the control of the CIA, the Marines and others, and you are saying you don't even have a problem with—rather than us interrogating, us trying to elicit the information, handing them over to Syria, knowing from your own personal perspective that a tortured prisoner is not likely to produce honest valuable information, that there is a big missing piece here in your adamant resistance to identifying this area as

something that gives us a black eye internationally while simultaneously producing suspect information that perhaps could have been elicited, although you seem to think the CIA could not elicit this information from these high level al-Qaeda operatives. But at least if we did and abided by the rule of law, the Convention against Torture, we probably would have useful information that could protect our—

Mr. SCHEUER. Under Mr. Bush, Mr. Markey, most of these high level al-Qaeda people are in U.S. custody. It was only under Mr. Clinton, except for the case of Mr. Arar and perhaps several others, that they were taken to places exactly what you described.

Mr. MARKEY. We are talking about going forward now.

Mr. SCHEUER. No, sir. We have to stop here for a moment. Because the intervention by the Europeans today was clearly meant to help the Democratic Party. Because they discussed rendition like it only started in 2001.

Mr. MARKEY. Let's leave out the Europeans who were here today.

Mr. SCHEUER. It is pretty convenient, sir.

Mr. MARKEY. Well, let's just talk going forward.

Mr. DELAHUNT. If the gentleman would yield, I mean, we have enough on our plate to criticize the Bush administration and, you know, what is occurring without having to get into rendition.

Mr. SCHEUER. Without a doubt, sir. But it was very noticeable that for people who were so concerned with innocent people being turned over to Arab tyrannies that nothing was mentioned before 2001. And when you compare the record of the two administrations, if you believe that holding people in American custody is more fair and more gentle than holding them in Egyptian custody, you are clearly not being honest if you start on 9/11.

Mr. DELAHUNT. I will grant you that. If those are the facts, I have no reluctance to criticize any administration, whether it be Republican or Democratic, and I think my friend Mr. Rohrabacher would attest to that. But what I don't want is an executive to be making this decision alone in a vacuum without having filters that are necessary so that we can maintain this claim to moral authority which I believe to my core that sets us apart from—among the family of nations, if you will. I mean—

Mr. SCHEUER. I don't have any argument on that, sir.

Mr. DELAHUNT. And the point is, you know, I do appreciate your candor. I mean, while I have you here, let me just take advantage once more since we are ranging on—you know, we still have the Bush—we still have Vice President Cheney talking about links between Saddam Hussein and al-Qaeda, correct?

Mr. SCHEUER. Yes, sir.

Mr. DELAHUNT. I could criticize him, you know, about that. I think that is of much more interest, to be perfectly candid, along partisan lines because here you have the Vice President and you are my witness at that hearing because this is what you are saying on *Hardball*: "I happened to do the research on the links between al-Qaeda and Iraq and came up with nothing." You then went on to speak about Mr. Feith, and I too concur with your opinion on Mr. Feith: "I was pleased because"—and I will yield to my friend from California in a minute—"I was pleased because CIA's position

was reaffirmed and the analysis of Mr. Feith's unit was discredited."

While I have you here and given your experience and having been Chief of the bin Laden Unit, were there any links once and for all between al-Qaeda of an operational nature and Saddam Hussein?

Mr. SCHEUER. I have to say, sir, in my first book I wrote that there was. I retracted that information in my second book because I had been assigned by Mr. Tenet the duty of leading a team to examine 10 years worth of CIA classified information. There was nothing that I saw and nothing that the analysts saw after we produced the material that suggested a link between al-Qaeda and Saddam Hussein. I would add though, sir, I have no idea what Mr. Tenet told the President or Mr. Cheney.

Mr. DELAHUNT. Again, I go back to your criticisms of Mr. Clarke, President Clinton, Sandy Berger, et cetera. You don't know really what was said by the former Director Mr. Tenet when he went to the White House, when he went to NSC meetings. I think my memory is you said he was reassuring you that he was telling them, now is the time to get Osama bin Laden, and then he would come back and say, well, no one listened to me.

Mr. SCHEUER. Yes, sir. And now most of the memoirs that are coming out suggest that perhaps what he told his officers at CIA was not exactly the same thing he told—

Mr. DELAHUNT. He was playing a game. Now I know you are former CIA. I appreciate your loyalty, but come on, okay?

Mr. SCHEUER. There is, sir, accumulating evidence to that effect.

Mr. DELAHUNT. Thank you. Mr. Markey?

Mr. MARKEY. Thank you. I appreciate it. So 3 years ago, Dr. Scheuer, I introduced a bill that would ban extraordinary rendition, and it would also ban the United States from accepting diplomatic assurances from countries that are known torturers as a basis for us transferring a prisoner to one of those countries. Now, how do you feel about this idea of accepting diplomatic assurances from countries like Syria that they won't torture someone who we send to them?

Mr. SCHEUER. It isn't, sir, as Mr. Roosevelt's Vice President said at one time, worth a bucket of warm spit, sir.

Mr. MARKEY. So you don't feel comfortable accepting a diplomatic assurance then?

Mr. SCHEUER. If you accepted an assurance from any of the Arab tyrannies who are our allies that they weren't going to torture someone, I have got a bridge for you to buy, sir.

Mr. MARKEY. So would you support legislation that banned the acceptance of diplomatic assurances from a country that we know does—

Mr. SCHEUER. If we were prepared to do the dirty work ourselves and find a way to create within the U.S. legal system a process where we could bring these people to the United States, if there is no other option then—

Mr. DELAHUNT. Exactly.

Mr. SCHEUER. If there is no other option, sir, then I am in favor of sending them to wherever they will be off the street.

Mr. MARKEY. Again, there is a common responsibility to put in place a process to ensure that the CIA, not that they—not that they can engage in torture but that they have the capacity to be able to elicit the information which they need. Using your own words, that information which is gained through torture is not, in fact, highly likely to produce useable—

Mr. SCHEUER. Only in very rare cases.

Mr. MARKEY. In very rare cases.

Mr. SCHEUER. I think you would find, Mr. Markey, that the CIA would be highly delighted not to hold anybody for any period of time anywhere.

Mr. MARKEY. And I appreciate that, but on the other hand, those decisions should not be made by the CIA.

Mr. SCHEUER. Well, they weren't, sir. They are made by the President of the United States. No rendition target has ever been taken somewhere on the sole decision of the Central Intelligence Agency.

Mr. MARKEY. Precisely.

Mr. SCHEUER. Precisely, sir.

Mr. MARKEY. And we, that is the United States Congress, or at least I do in introducing that bill 3 years ago, 2 years ago and again this year, want to ensure that the United States is in fact complying with the Convention against Torture. In your opinion, sir, should the United States comply with the Convention against Torture?

Mr. SCHEUER. Only if it can do so in a way that makes sure the United States and its people and its territory are secure.

Mr. MARKEY. So you are saying that we should abide by the Convention against Torture, to which we are a signatory, only when in the opinion of the President of the United States, or someone who works for the CIA determines, that we should not have to abide by—

Mr. SCHEUER. You seem to be forgetting that the CIA is a service organization in response to the executive branch whether the Republicans or Democrats are in power. It is ultimately their decision and it is the Congress' decision. If they want to sign onto an agreement that prevents the United States from defending itself, then they should do that and worry about defending their decision.

Mr. MARKEY. Let me ask one final question, and I appreciate the indulgence of the chairman. Your view is, again, let me just go back to Maher Arar, his capture at JFK, his transfer to Syria, his being tortured and then being returned to Canada. You are saying that in your opinion that the United States does not owe that man and his family an apology.

Mr. SCHEUER. I certainly wouldn't apologize to him, sir.

Mr. MARKEY. And again could you elaborate why you would not apologize?

Mr. SCHEUER. I suspect that he is very much involved in activities that are negative toward Canada and the United States.

Mr. MARKEY. Do you have any evidence?

Mr. SCHEUER. The United States would not have been engaged in moving him to Syria, and I don't know the details, if there had not been an indictment-like document that said he was. And I think when you have to remember the—

Mr. MARKEY. Can I just ask—

Mr. SCHEUER. No, sir. Let me take a minute. You have to remember the circumstances in which he was released by the Syrians. President Bush imposed new sanctions on the Syrians, and 1 or 2 days later they released Maher just to stick their finger into the eye of the United States.

Mr. MARKEY. Why did we sanction Syria?

Mr. SCHEUER. They are the world's greatest enemy I understand from my childhood.

Mr. MARKEY. So we have transferred a prisoner to our greatest enemy, knowing that they engage in torture. The Canadian Government has done an exhaustive, eye-watering study of this issue and has determined that there was no evidence that has been produced that would indicate that he is in fact a terrorist or associated with a terrorist group and yet you are continuing to maintain that President Bush had credible information.

Mr. SCHEUER. Yes, sir.

Mr. MARKEY. You don't have any reason to know that.

Mr. SCHEUER. I absolutely do have reason to know that because there is—no one can be picked up, sir, without the approval—

Mr. MARKEY. I am just going to finish up on this point, Mr. Scheuer. The President has yet to apologize for the fact that he knew or should have known there was no uranium, no nuclear weapons program in Iraq, that he knew or should have known that there was no al-Qaeda connection in Iraq. And I extend it here, that he knew or should have known that at least subsequently after the fact, ex post facto, after the Canadian Government has done an exhaustive study that there was no evidence that Maher Arar had a link to terrorism. The problem that we have here is that Mr. Bush is chronically incapable of saying the toughest words to say in the English language, I made a mistake. And so for you to impute to Mr. Bush a justification for the extraordinary rendition of this—of this person and the subsequent torture of him just because he refuses to apologize is completely inconsistent with the man's entire history over the last 4 years since the initiation of the war in Iraq and his global war on terrorism. So I just think that you are extrapolating too far on a premise that is quite faulty. The reason for your maintenance that we owe no apology to Maher Arar is because President Bush has yet to admit that he made a mistake, because that unfortunately would need all of us to not apologize for many things that we know are now untrue.

Mr. SCHEUER. If President Bush owed anybody a responsibility, he would have to apologize for the Canadian Government providing us with information that was incorrect. That is the extent.

Mr. MARKEY. Why doesn't he do that?

Mr. SCHEUER. I don't know Mr. Bush, sir. You may find it hard to believe, but he doesn't particularly care for me.

Mr. MARKEY. Well, I think you should know—if you are CIA, and you have all these dots, and this is the one remaining dot out here that you can't figure out why President Bush and Dick Cheney refused to apologize, then I would say that that in and of itself is evidence of why the CIA never did stand up to say, we know there is no nuclear program in Iraq. Okay. We know there is no smoking gun, mushroom cloud threat that justifies sending in 150,000

troops, when your testimony today is completely consistent with that whole pattern, because there is no dot that you can bring to this room that would in fact say that Maher Arar has a link to terrorism except for the fact that Dick Cheney and——

Mr. SCHEUER. I think that is very incorrect, sir.

Mr. MARKEY. Okay.

Mr. SCHEUER. If the CIA was involved—and I am not even sure they were involved in the Maher Arar business. But if they were, there is no operation that is undertaken without the approval of the United States Government lawyers. That approval is not based on a hunch. It is not based on solely Canadian information. It is based on an array of intelligence.

Mr. DELAHUNT. You have much too much confidence in lawyers.

Mr. SCHEUER. No, sir. I need to do that because I can't go to the bathroom at CIA without a lawyer.

Mr. DELAHUNT. I am going to give a minute to Mr. Rohrabacher, and I will wrap up.

Mr. ROHRABACHER. First and foremost, thank you for holding this hearing, Mr. Chairman.

Mr. MARKEY. It is a great hearing.

Mr. ROHRABACHER. Let me again reiterate that the chairman has my full support in holding any hearing that he would choose to hold in order to find out information and to bring truth to the American people. I have got no problem with that at all. And I am very pleased as you can see. The chairman also granted us our witness, and we have had a great discussion based on this type of cooperation. And I may disagree with the chairman on certain conclusions that he has reached, but I believe that perhaps maybe we should have a hearing based on was there any connection between Saddam Hussein and al-Qaeda, and just how specifically on that. That was something that you brought up, and there is no reason at all——

Mr. DELAHUNT. Only if we can bring back Dr. Scheuer and Ms. Smith. Only if they will do it one more time.

Mr. ROHRABACHER. But I am supportive of any efforts that will bring out information. I will support the subpoena request, et cetera, that I believe in truth. And I believe in our democratic system. And I think that Mr. Scheuer did a magnificent job in presenting his case, and I agree with many of the things he said. And let me just note that in terms of—there will be examples that we will be able to come up with when we look back on this war with radical Islam where we have made mistakes and that some innocent people, especially innocent Muslim Americans, through the FBI actions, et cetera, have been in some way, you know, brutalized and unfairly treated, and I am very sympathetic to that. And to the degree that we have hearings, Mr. Chairman, that will sharpen the awareness of those people who are in the field that we expect them to be truthful, we don't expect them to be frivolous, we expect them to take every step necessary to see that they are not persecuting an honest person because he happens to have the same name as a terrorist and that Arab names may have the same sort of look-alike, and I know some people are in some way hurt and damaged by what our Government is doing. To the degree that this hearing and other hearings that we will have sharpen the FBI

and the CIA so that we can prevent that type of damage, which is done in every conflict that we have ever been in, there have always been mistakes that are made. That is not a reason for us to in some way hobble the efforts to be successful in the conflict that we are in. That was true in World War II, certainly true during the Cold War and it is certainly going to be true here in the war with radical Islam. I think that the discussion today will put our people on notice that there is and maybe there will be something we can work out that will help systematize this in a different way that would then keep our ability to do the things that are necessary to deal with the international al-Qaeda threat but still help, you know, minimize the number of mistakes that are made.

So I—and about Mr. Bush's personality not being able to admit mistakes, I think this is the last Congressman that you will ever find who will ever disagree with that assessment of this President as that being a problem with—a personality problem. Having worked in the White House, I will say I have seen first executives up close in very different administrations.

Finally, let me just note that I think this issue of rendition and extraordinary rendition, I think that we need to make sure that when America is dealing with this kind of challenge, this isn't World War II where we can arrest Japanese POWs and German POWs and let them go afterwards, we need to be tough and courageous and we need to be, yes, to be concerned if mistakes are made. But those people who would kill our fellow citizens by the tens of thousands, who would put off a dirty bomb in Boston Harbor and murder hundreds of thousands of our citizens, we need to be very tough and we cannot be hard on those people and say because those defending us made a mistake that we in some way blame them as individuals and want to bring them down and prevent them from doing their important job of protecting our families.

So with that said, I thank you, Mr. Chairman, for having this hearing. I think it has been proven to be very, very beneficial.

Mr. DELAHUNT. Thank you, Mr. Rohrabacher. And Ms. Smith, thank you very much, too. Believe me, you added considerably, and I hope that you and Dr. Scheuer, I hope that you will come back and visit us, and we will continue to explore this.

You know, as I indicated in my previous career, I served as the district attorney, the State's attorney up in the greater Boston area. And one of my great fears was incarcerating someone that was innocent. That was a nightmare for me. And I had to apologize on two different occasions. One was an aggravated rape. Four young men were charged. I had an uneasy feeling about the accuracy or the validity of that charge. I instructed my team of investigators to continue to pursue it, and eventually discovered that the charges were false. I went, I conducted a press conference, and I apologized because reputations were damaged, people were hurt, and in my heart I knew it was the right thing to do. It was the American thing to do. That is what America is about.

Of course we have made mistakes. We will continue to make mistakes. I make mistakes every day, more than I would like to admit, but I do. But what we have to strive for is to minimize those mistakes. There is no individual, there is no agency, there is no organization that is infallible, but what we do as Americans is work to-

ward that ultimate goal that we know is unachievable. But that is what makes us so special. That is what sets us apart. That is why it hurts me when I read these polls. But we need to check what the reality is in those worlds. That is why we need someone like you to come in and lay it right out there about the threat to America, not in terms of renditions but to talk about what are we doing in terms of dealing with those who would harm us, so-called terrorists. How do we go about protecting ourselves and at the same time doing the right thing, the moral thing, the American thing? And with that we are finished, and thank you both.

[Whereupon, at 6:15 p.m., the subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ROBERT WEXLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRMAN, SUBCOMMITTEE ON EUROPE

Chairman Delahunt, I want to thank you for jointly holding today's hearing with the Europe Subcommittee on the "Global Polling Data on Opinion of American Policies, Values and People in Europe." I also want to thank our witnesses for testifying.

Today's hearing is critical because America's failure to address historically low European public opinion regarding the United States directly affects our ability to address global threats. A failure to address this deficiency is in direct contrast to our nation's interests and could prevent our strongest allies from joining with the United States when we need them the most. For example, recent decisions made in several European capitols rejecting American requests for increased troop levels in Afghanistan are directly related to low public opinion of the United States.

I believe a Democratic led Congress may be the perfect antidote for a European public opinion that does not trust President Bush. To this end, it is incumbent on this Congress to act as a bridge to Europe, repair tattered relationships and address issues such as global climate change and the crisis in Darfur. In addition, we must engage Europeans on issues of concern to their public, including allegations of secret CIA prisons, extraordinary renditions, and human rights concerns in Guantanamo.

In addition, if there is one thing Congress could do to improve our image in Europe it would be to expand the Visa Waiver Program. As of today, this program does not including our staunchest Eastern and Central European allies such as Greece, Hungary, Poland and other new EU Countries. The Visa Waiver Program has immense value for relations between the U.S. and Europe, and an expansion of the program would greatly enhance cultural, economic, political and personal exchanges across the Atlantic.

All is not bleak, despite negative public perception in Europe of the US and President Bush, most European leaders have embraced policies that dovetail with those of America. As the Ranking Member of the Europe Subcommittee over the past four years and now as Chairman, I have witnessed first hand a genuine European desire for a closer relationship—an equal partnership based on shared responsibilities.

America must embrace our allies in Europe, including fully embracing the European Union. As someone who regularly disagrees with President Bush, I am convinced that his trip to Brussels and the EU in January of 2005 was a critical step in improving transatlantic relations. A European Union that is politically, economically and militarily successful is in America's interests and represents an opportunity for a weary American public to have a European partner that shares global burdens, from the promotion of democracy, to preventing the proliferation of weapons of mass destruction, and from addressing global warming to addressing extremism and terrorism.

Too often our European allies are accused of not supporting America's efforts to combat terrorism or not doing enough to prevent Iran from building a nuclear weapons program. Those claims are greatly exaggerated and often bear no relation to the truth. The United States and Europe have worked in tandem to thwart Iran's nuclear ambitions. So far, America and Europe have worked together as Quartet members to isolate the Palestinian government led by Hamas—I hope that cooperation continues. We have also worked together to rebuild and provide security in Afghanistan, and have collaborated extensively in the in the Balkans, Belarus, Lebanon and Sudan. It is critical that these joint efforts continue.

How the United States got to this low point in European public opinion and what needs to be done to reverse this problem, in Europe and globally, are critical issues

that must be addressed. Chairman Delahunt, I want to thank you for holding this joint hearing today.

