

under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 4837, a bill making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

Bill Frist, Kay Bailey Hutchison, Ted Stevens, Thad Cochran, Wayne Allard, Chuck Grassley, Norm Coleman, Lamar Alexander, Pat Roberts, Sam Brownback, Mitch McConnell, George Allen, Craig Thomas, Orrin Hatch, Richard Lugar, Mike DeWine, Gordon Smith.

#### DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2005—CONFERENCE REPORT

Mr. FRIST. Mr. President, I now move to proceed to the conference report to accompany H.R. 4567, the homeland security appropriations bill.

The PRESIDING OFFICER. Without objection, the motion is agreed to. The clerk will report.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4567), making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same signed by a majority of the conferees on the part of both Houses.

The Senate proceeded to consider the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of today, October 9, 2004.)

#### CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 4567, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

Bill Frist, Thad Cochran, Ted Stevens, Kay Bailey Hutchison, Wayne Allard, Chuck Grassley, Norm Coleman, Lamar Alexander, Pat Roberts, Sam Brownback, Mitch McConnell, George Allen, Craig Thomas, Orrin Hatch, Richard Lugar, Mike DeWine, Gordon Smith.

Mr. FRIST. Mr. President, I now ask unanimous consent that the two live

quorums with respect to these conference reports be waived.

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

#### MORNING BUSINESS

Mr. FRIST. Mr. President, I now ask unanimous consent that the Senate begin a period of morning business, with Senators permitted to speak for up to 5 minutes each.

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

#### HONORING OUR ARMED FORCES

ARMY SPECIALIST ALLEN JEFFREY "A. J." VANDAYBURG

Mr. DEWINE. Mr. President, I rise this evening to say thank you to the men and women serving in our Armed Forces. Too often, we don't take the time to show our appreciation and tell them what their service means to us. They are there for us each day, dedicated to protecting all that we hold dear. They are there for us, making our world more secure. They are there for us, making our world a better place—a safer place. They are there for us, protecting our freedom.

That freedom, though, as we know so well, does not come without a price. It does not come without sacrifice. As General Douglas MacArthur once said:

The soldier, above all other men, is required to perform the highest act of religious teaching—sacrifice. . . . The soldier who is called upon to offer and to give his life for his country is the noblest development of mankind.

This evening, I rise to honor a Mansfield, OH, serviceman who selflessly gave his life while saving those of his comrades. Army SP Allen Jeffrey Vandayburg—"A.J." to his family and friends—earned the Bronze Star Medal with Valor for his final act of bravery—an act that ultimately saved the lives of the men and women serving with him.

On April 9, 2004, in Barez, Iraq, A.J. and other members of the Army's 1st Infantry Division—the "Big Red One"—found themselves in the middle of a fierce firefight with Iraqi insurgents. A.J. was manning the gunner position of his Bradley fighting vehicle when his unit was fired upon. According to an official Army report, A.J. fought valiantly, drawing enemy fire to himself. The report detailed the following:

Vandayburg's unparalleled reflexes allowed him to destroy an [enemy] who was attempting to fire a rocket propelled grenade within 50 meters of his vehicle. Vandayburg had to swivel the entire turret, acquire the target, and destroy the enemy before the rocket-propelled grenade could be fired.

A.J. prevented that grenade from hitting his convoy. He saved many lives that day—an act that ultimately took his own life. His valiant efforts prompted the insurgents to focus their fire on his vehicle. A.J. was killed in the onslaught. He was just 20 years old.

A.J. was truly a great soldier—a courageous young man who put the safety of others above his own. We will never be able to repay A.J. for what he has done, and we will never be able to honor him the way he truly deserves. We can, however, remember this American hero as he was—as a strong, independent young man who did a great deal of good in this world.

In his all too brief 20 years, A.J. touched many lives. His mother, Chantil, fondly recalls that "everybody loved him." It was his smile; it was hard to stay mad at him." A.J.'s father, Allen, remembers that he was the kind of kid who could walk into a room and just light it up.

A.J. loved his family very much. In the summers, A.J. always looked forward to their family vacation to Myrtle Beach, SC. A.J. loved kids. Family friend, Kim Loveland, recalled that she would pay A.J. to watch her children, only to have him turn around and use the money to buy the kids candy.

A.J. went to Mansfield High School, where he played golf and baseball. He was known as a "good guy" who had a lot of good friends. After graduation in 2001, A.J. enlisted in the Army. He would eventually serve in Kosovo, Germany, Kuwait, and Iraq. Allen and Chantil Vandayburg treasure the picture they have of their son with children in Kosovo. Allen likes to call A.J. "a warrior who also had a soft side."

A.J. was a lot like his father. Allen is a 25-year veteran of the Mansfield Police Department. A.J. learned from his dad the value of public service and how to trust your comrades—lessons he would bring with him overseas. A.J.'s parents knew that their son believed in what he was doing in Iraq. A.J. e-mailed them as often as he could and would tell them not to worry—that he trusted his fellow soldiers and knew they would look out for him. In his final battle, it was A.J. who paid the ultimate sacrifice for his comrades and for Iraqis he did not know.

A friend of A.J.'s, Nathan Pival, who is serving in Afghanistan, posted the following message on a Web site honoring A.J.:

A.J.—I found out what happened to you my first week in Afghanistan. To say the least, I felt like a piece of me died, too. I mean, who would have thought that you and me would end up in the Army after high school? I know you didn't find out I was in the service until you tried to call my cell when I was in Basic, but I want you to know that you were the person that helped to convince me that the military would help me out. It has helped me. . . . You are a hero, and you did the right thing, and that is what matters. I believe in a higher purpose, so I know I will see you again some day, but I'm still pretty upset that I am going to have to wait so long to tell my Army stories to my buddy who motivated me to join. If it wasn't for you, I'd probably . . . be going nowhere. I'm sorry I couldn't be there for you man. See you again someday.

A.J.'s family found solace in the final act of devotion from one brother to another. Though he described it as "the hardest thing I've ever had to do,"

A.J.'s brother Chris, a Marine, crossed military branches to escort his brother's body from Dover Air Force Base to their home in Mansfield.

Hundreds of people came to support the Vandayburg family at A.J.'s memorial service. Hundreds more lined the funeral route. The outpouring of support was a truly moving display. At the memorial service, Reverend David Root spoke to the standing-room-only crowd. He said:

[A.J.] was special and that is why you are all here. He chose to take the tough road. He knew the risks. . . . He changed the history of this country.

A.J. Vandayburg was indeed special. He will be remembered always for his bravery, compassion, and sacrifice. He will be remembered as a hero.

I close my remarks with the heartfelt words of A.J.'s 11-year-old sister, Taylor. Her words speak volumes about A.J., her hero—and A.J., her big brother:

Bubby, you are my biggest hero, and I will always love you, but that does not mean I am still not mad at you for leaving, 'cause I am. But, I will always and forever love you. I miss you so much. You are loved and missed so much by me, Mom, Dad, and Chris. . . . You are my hero and my bubby and I love you so much. I am not saying goodbye because you are not gone. You are still with me, and you are the biggest and bravest soldier I know and I know God has a plan for you, but I had one for you to be right here beside me. You still are. I love you so much.

#### ABUSE OF FOREIGN DETAINEES

Mr. LEAHY. Mr. President, as we near the end of this session, I am disappointed to report that Congress seems content to let the issue of foreign prisoner abuse linger without effective congressional oversight. Some have argued that continuing to investigate this matter will drag it out, and have the effect of preventing us from putting the scandal behind us. I disagree. We have to uncover the full truth in order to ensure that such abuses are not repeated. I am sorry to report that each week brings new allegations that reveal how much we still do not know.

Last week, I spoke on this floor about a recent Los Angeles Times article that raised troubling new allegations about the abuse of Afghan detainees in Gardez, including the death of one detainee that was never reported up the chain of command. The article revealed what appears to be a complete disregard for established Army procedure among certain units in Afghanistan.

I sent a letter to Defense Secretary Donald Rumsfeld on October 1, 2004, asking him several questions about the allegations raised in the news article. I asked Secretary Rumsfeld to explain how the special forces base at Gardez was allegedly allowed to operate with no recordkeeping requirements or standing operating procedures—an allegation that was corroborated by a U.S. Army investigator in Afghanistan. I asked whether any official policy allowed special forces units to suspend

normal recordkeeping requirements while operating in Afghanistan or Iraq. I asked if there is an official policy to allow special forces units to detain prisoners in local Afghan jails or other undisclosed facilities. I asked Secretary Rumsfeld for a prompt response and hope that he delivers one soon.

Even without the answers to these questions, we now know that senior officials in the White House, the Justice Department, and the Pentagon set in motion a systematic effort to minimize, distort, and even ignore our international agreements on torture and the treatment of prisoners. I am dismayed to report that some Members of Congress are now attempting to make it much easier for the administration to circumvent our treaty obligations. The 9/11 Recommendations Implementation Act, H.R. 10, was recently introduced by the House Republican leadership. Sections 3032 and 3033 of that bill would make it official U.S. policy to exclude certain non-citizens from the protection of the Convention Against Torture, a treaty to which the United States is a party. To enact such language after the abuses that took place at Abu Ghraib and other locations would further undermine the once distinguished reputation of the United States as a world leader on human rights.

Reports of the administration's support of these provisions are conflicting. Last week, Speaker HASTERT's office claimed that the Justice Department "wants and supports" the provisions. The Justice Department declined to offer an official endorsement of sections 3032 and 3033, but claimed that it favored any "provisions that will better secure our borders and protect the American people from terrorists." In an attempt to reconcile these statements, Senator KENNEDY and I sent Attorney General Ashcroft a letter on October 1 urging him to repudiate the Department's support for these sections. We were pleased to learn this week that the White House went on record in opposition to the provisions, but we still await a reply from the Attorney General definitively stating the position of the Department of Justice.

Next Friday, October 15, is the deadline imposed by a Federal judge for the administration to turn over or identify all documents relating to the treatment of prisoners held by the United States at military bases and other detention facilities overseas. In his order, Judge Hellerstein stated: "No one is above the law: not the executive, not the Congress, not the judiciary." I could not agree more. Unfortunately, this administration has continually ignored my requests for these documents—I will not be surprised if it refuses to comply with this court order. I would note that the original Freedom of Information Act request for these documents was submitted in October 2003, a year ago. Any embarrassment their release may cause now—less than 3 weeks before the Presidential elec-

tion—is due to the administration's own stonewalling.

As the 108th Congress comes to a close, many questions about the prison abuse scandal will undoubtedly remain unanswered. Several Pentagon investigations are now complete, but none of them paint a complete and unbiased assessment of the prisoner abuse scandal. This Senate, and in particular the Judiciary Committee and Governmental Affairs Committee, failed to fulfill its oversight responsibilities. I have said many times there needs to be a thorough, independent investigation of the actions of those involved, from the people who committed abuses, to the officials who set these policies in motion. Perhaps in the new year, with a new Congress, the administration in power will be ready to seek the full truth about this scandal and begin the process of restoring honor to our nation.

I ask unanimous consent that the letters to Secretary Rumsfeld and Attorney General Ashcroft, both dated October 1, 2004, be printed in the RECORD.

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

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, October 1, 2004.

HON. DONALD RUMSFELD,  
Secretary of Defense,  
Washington, DC.

DEAR SECRETARY RUMSFELD: As you know, I am deeply troubled by the revelations of abuse of prisoners in U.S. custody overseas. I have closely monitored the numerous ongoing and completed investigations instigated by the Pentagon, but remain skeptical that these investigations will uncover the full truth. Each of these probes is limited in scope or authority and, therefore, none will comprehensively investigate the abuse of detainees. Each week brings new allegations that reveal how much we still do not know.

I am particularly disturbed by a story published in the Los Angeles Times on September 21, 2004. This article raises troubling new allegations about the abuse of Afghan detainees in Gardez, but also reveals what appears to be a complete disregard for established Army procedure among certain units in Afghanistan. According to the news report, based in part on a report written by Afghan prosecutors for the Afghan Attorney General, U.S. Army Special Forces arrested eight Afghan soldiers in March 2003 at the request of the provincial governor. The prosecutors' report and an internal memorandum prepared by a United Nations delegation both allege American mistreatment of the detainees including repeated beatings, immersion in cold water, electric shocks, being hung upside down, and having toenails torn off. One detainee, Jamal Naseer, reportedly died as a result of the torture. The U.S. Army Criminal Investigation Command (CID) recently opened a criminal probe into Naseer's death.

This incident is very troubling, but it points to a much larger problem. CID received a tip about Naseer's death earlier this year, but stated that it could not investigate the matter due to a lack of information. Christopher Coffey, an Army detective based at Bagram air base, told the L.A. Times: "We're trying to figure out who was running the base. We don't know what unit was there. There are no records. The reporting

system is broke across the board. Units are transferred in and out. There are no SOPs [standard operating procedures] . . . and each unit acts differently."

Apparently, because these units failed to follow Army procedure, Naseer's death was never reported up the chain of command. Yet, Lt. Gen. Mikolashek's report on detainee operations inspection, released in July of this year, conclusively stated that the team "that visited Iraq and Afghanistan discovered no incidents of abuse that had not been reported through command channels; all incidents were already under investigation." We now know that this statement cannot be accurate. What we do not know is whether and how many other deaths, let alone cases of abuse, may have gone unreported.

I also have new questions about the Defense Department's involvement in the "ghost detainee" matter. The Fay-Jones report revealed that the ghost detainee problem in Iraq was far more pervasive than the Defense Department had previously acknowledged, but that report placed much of the blame on the CIA. The L.A. Times story, however, accuses U.S. Special Forces commanders in Afghanistan of using local jails to hide prisoners off of the official roles.

In order to better understand the situation in Afghanistan, and the role of the Department in monitoring the actions of forces on the ground, I ask that you respond to the following questions by October 8, 2004.

1. Please explain how the Special Forces base at Gardez was allowed to operate with no recordkeeping requirements or Standing Operating Procedures (SOPs).

2. Did any official policy allow Special Forces units to suspend normal recordkeeping requirements or chain of command reporting while operating in Afghanistan or Iraq?

3. Did any official policy allow Special Forces units to detain prisoners in local Afghan jails, or in any other undisclosed facilities?

4. Mr. Coffey's quote above suggests that an unknown number of detention centers have operated or are now operating in Afghanistan with total impunity. In light of the allegations raised in the L.A. Times story, what actions is the Pentagon taking to investigate the situation and resolve the problems?

5. In the absence of recordkeeping and SOPs, do you agree that none of the ongoing or completed Pentagon investigations can claim to have uncovered all allegations of abuse?

6. Are any other government entities, such as the CIA or other intelligence agencies, involved in the operation of these detention centers or in the treatment or interrogation of prisoners? If so, please describe the agencies and their role. If the answer to this or any other question contained in this letter is classified, please submit your answer in classified form and make it available to appropriately cleared staff.

As stated above, I request that you answer these questions by October 8, 2004. Thank you for your prompt attention to this matter.

Sincerely,

PATRICK LEAHY,  
Ranking Member.

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, October 1, 2004,

Hon. John D. Ashcroft,  
Attorney General, Department of Justice,  
Washington, DC.

DEAR ATTORNEY GENERAL ASHCROFT: We write to express our deep concern about the report in yesterday's Washington Post that

the Department supports the "rendition" of detainees to nations where they are likely to be tortured.

The United States is a party to the Convention Against Torture, which provides that "No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture." Since 9/11, there have been numerous reports that detainees in the custody of U.S. military or intelligence officials have been transferred for interrogation to governments known to torture prisoners. According to such reports, detainees who refuse to cooperate with U.S. interrogators have been "rendered" to foreign intelligence services in Saudi Arabia, Jordan, Morocco, Syria, and other countries that practice torture. One report stated that Deputy Attorney General Thompson approved the rendition to Syria of a Canadian citizen, who was confined in a small dark cell for a year and beaten on his palms, wrists, and back with an electric cable. Syrian officials later released him, telling reporters they found no link to Al Qaeda.

Until now, Administration officials have denied any involvement in this practice. At a Senate Armed Services Committee hearing on May 11, Undersecretary of Defense for Intelligence Stephen Cambone testified that "to the best of [his] knowledge" the Administration was fully complying with all legal requirements and that all reports of U.S. officials engaging in the practice of rendition were false.

Yesterday's report, however, states that the Department is urging House Republicans to include provisions in the 9/11 intelligence reform legislation authorizing the practice of renditions. Sections 3032 and 3033 of the bill, H.R. 10, would require the Secretary of Homeland Security to issue new regulations to exclude certain non-citizens from the protection of the Convention Against Torture. The changes would increase the burden of proof on any person being deported or rendered to establish "by clear and convincing evidence that he or she would be tortured," and would deny the jurisdiction of courts to review the new regulations or claims brought under the Convention Against Torture by aliens at ports of entry.

These changes would violate longstanding U.S. law and policy, undermine basic humanitarian and human rights standards, expose U.S. soldiers and citizens traveling abroad to greater danger, and further weaken America's standing in the world.

Yet the spokesman for House Speaker Hastert is quoted in the report as saying that the Department "really wants and supports" these provisions. Department spokesman Mark Corallo was also quoted as saying, "We can't comment on any specific provision, but we support those provisions that will better secure our borders and protect the American people from terrorists."

No Department official should express support, either openly or behind the scenes, for provisions that so clearly violate fundamental human rights. Torture defies our laws and stains our ideals. The abuses at Abu Ghraib prison have been a major setback in the war on terrorism. An essential part of winning that war and protecting the country for the future is respect for the ideals that America stands for at home and throughout the world.

The Department has already undermined those ideals by issuing legal memoranda attempting to weaken the definition of torture and eliminate restraints imposed by U.S. laws and international treaties on the conduct of Executive Branch officials. We urge you to repudiate immediately and without qualification the Department's support for

sections 3032 and 3033 in the House legislation, and to put an immediate halt to any Administration involvement in the illegal practice of rendition.

Sincerely,

EDWARD M. KENNEDY,  
U.S. Senator.  
PATRICK LEAHY,  
Ranking Member.

#### MEDICARE MODERNIZATION ACT

Mr. HATCH. Mr. President, I have to respond to the outrageous charges made by my colleagues on the other side of the aisle regarding the Medicare statement I delivered yesterday.

I was disturbed by several remarks, especially that seniors have flatly rejected the Medicare prescription drug benefit. How is that even possible when the drug benefit doesn't even go into effect until January 1, 2006?

How is that possible when many Medicare beneficiaries are participating in the Medicare Drug Discount Card and have seen savings in their drug costs up to 20 percent per drug? I do not see that as an outright rejection at all.

My colleagues need to be careful about their charges, especially when they do not have the facts to back them up. I also take issue with my colleague's assertion that our prescription drug law is only a drug law in name. What does he mean by that?

Let me remind the Senator from Illinois that because of this new Medicare prescription drug law, 40 million Medicare beneficiaries will have drug coverage if they want it. The bill provides generous subsidies to low-income Medicare beneficiaries who, today, cannot afford to purchase drugs.

Prior to enactment of the Medicare Modernization Act, these beneficiaries had to make tough choices between buying their prescription drugs and putting gas in their cars. Or buying prescription drugs or putting food on the table. Or buying prescription drugs or paying their rent. Once the Medicare prescription drug plan goes into effect on January 1, 2006, those Medicare beneficiaries will no longer have to worry. And another point that needs to be raised regarding this matter—if there were any proposals that deserve to be recognized as offering a drug benefit in name only, it's the two Democratic plans of two years ago—plans supported by 50 and 45 Democrats respectively, including the Democratic Leader and Senator KERRY.

My colleague, Senator GRASSLEY, described those plans a few days ago, but let me take a few minutes to recap. The first Democratic plan had a drug benefit that lasted just six years. Talk about offering a drug benefit in name only.

The second plan didn't even offer a benefit to the vast majority of beneficiaries. Seventy percent of beneficiaries would not have received any basic coverage. A plan that shuts out the vast majority of beneficiaries—how can you call that a drug benefit? Guess what those 70 percent got.