

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

#### MORNING BUSINESS

Mr. WARNER. Mr. President, I believe good progress is being made. I think there could be a proper utilization of the time. Given the structure of the understanding at the leadership level, which the Senator from Michigan and I are trying to maintain and will maintain, I would suggest that the Senate now go into a period of morning business with Senators to speak up to 15 minutes.

Mr. LEAHY. Twenty minutes.

Mr. WARNER. Let us say 15 minutes with the exception of the Senator from Vermont, who desires 20 minutes, and hopefully Senators who might wish to address issues relating to the bill can avail themselves of that opportunity. Would that be correct?

Mr. LEVIN. Reserving the right to object, I surely will not, it is our intent I believe at the end of this first period to have our structure put back in place—that we would immediately return to the bill and resolve it.

Mr. WARNER. That is correct.

Mr. President, at this point in time, is my unanimous consent request granted?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WARNER. Mr. President, I thank the distinguished Senator from Vermont for his usual courtesy.

Mr. LEAHY. Mr. President, I thank my friend from Virginia. For over a quarter of a century we have been accommodating each other. I refer to the distinguished senior Senator from Virginia as “my Senator” when I am away from home. I have had the privilege of living part time during the year in his beautiful State, and we have tried to accommodate each other. I think this is the easiest way out of it. Otherwise, we would be in a quorum call. I do thank him.

#### PRISONER ABUSE

Mr. LEAHY. Mr. President, I understand that at the time the Leahy amendment comes up, there is likely to be a tabling motion. It would be, in effect, a second-degree amendment offered by others on the Judiciary Committee.

The amendment would require the Attorney General to produce documents that the Judiciary Committee needs in order to conduct oversight of the Department of Justice.

The Judiciary Committee has to get to the bottom of the prisoner abuse scandal. Aspects of this scandal are within the jurisdiction of the Judiciary Committee. To get to the bottom of it, we require documents from the Attorney General.

What happens if we are blocked from that? I say to my friends that if they vote to block us from getting the docu-

ments we seek, what they are doing, whether intentionally or otherwise, is contributing to a coverup.

Let me explain why this amendment is so important. There has been much debate over the last several days and weeks about the abuse of foreign prisoners, and the guidance provided by the President's lawyers with regard to torture. This debate will continue for some time throughout our country, particularly as more courts-martial are held, with the facts emerging slowly, and as the White House releases only some of the documents that are needed to fully understand the origins of the scandal.

In the meantime, the Senate, the body that is supposed to be the conscience of the Nation, should act. There are some very basic things we can do to clarify U.S. policy regarding the treatment of foreign prisoners. We can bring greater transparency to this issue. That is what my amendment does. It is very straightforward, with three basic sections.

First, it lays out U.S. policy with regard to the treatment of prisoners. Second, it establishes basic reporting requirements to which the Congress and the American people are entitled. Finally, it sets out a training requirement for civilian contractors who come into contact with foreign prisoners.

With regard to the policy, my amendment is very forthright. It states that the United States must treat all foreign prisoners humanely and in a manner that the United States would consider legal if perpetrated by the enemy against an American prisoner. That is a restatement of many decades of U.S. policy and the Army's own regulations.

My amendment also reaffirms the obligation of the United States to abide by the legal prohibitions against torture. That is the law of the land.

The memos authored by the Justice Department apparently reveal another view: that torture can be ordered by the President despite clear laws in the United States against it. Even President Bush now says he disagrees with that view.

We should reaffirm that torture is not allowed under any circumstances.

The amendment also codifies the longstanding Army regulation governing the treatment of foreign prisoners. That regulation states that where there is doubt about the legal status of a foreign prisoner, then the prisoner is entitled to the protection of the Geneva Convention, at least until a status can be appropriately determined by a “competent tribunal.” The procedures for the tribunal are specified in regulation.

Unfortunately, our government has ignored this regulation during the course of the war on terrorism and the war in Afghanistan. No such screenings have been conducted in Afghanistan. The administration simply designates someone as a terrorist and that is enough to land them in prison indefinitely.

We have not had one trial by military commission yet. And certainly we determined that some of these people we called terrorists, who could be held indefinitely, were not terrorists, because we let some people go. I suspect some more people will be let go.

We are in this bind because the administration failed to follow the Army's own guidance. The military lawyers knew there would be situations when the legal status of a foreign person captured by our troops was not clear, so they devised a very careful, very basic screening process. By conducting these status hearings, we would then know what rights and what legal protections the individual is entitled to. That is the military policy. It is certainly the policy our U.S. military wants other countries to follow, and the one we said we will follow.

My amendment further states that it is in the interest of the United States to expeditiously prosecute the cases of those held at Guantanamo Bay. We have given the administration wide latitude in how it operates in Guantanamo. Congress understands we are fighting a new kind of war, one where civilians are at great risk, where intelligence is critical, and where the country has to be tough against its enemy.

Having said that, after all the months and years we held prisoners in Guantanamo, not a single case has been prosecuted. Not five, not four, not three, not two, not one. Not a single prosecution. One would think that with the thousands of lawyers in our military and our Justice Department, we could act with some greater dispatch. One would think that of all the people locked up indefinitely, we could have found one, just one, in all those prisoners that we could have prosecuted. But that is not the case.

For the bad actors, the murders, the terrorists at Guantanamo, we need to bring charges against them so that the victims of their crimes can have justice and so that those accused, if found guilty, can finally have their fate determined. These indefinite detentions, where nobody is prosecuted, where no actions are taken, are contrary to our legal system and contrary to the security interests of the United States.

In the reporting section of my amendment, I ask for four basic pieces of information: One, a quarterly report providing the number of prisoners who were denied prisoner of war status and the basis for denying that status; two, the proposed plan for holding military commissions at Guantanamo Bay; third, previous Red Cross reports provided to the military regarding the treatment of prisoners—the ICRC reports can be submitted in classified form as the ICRC has requested; and four, a report setting forth prisoner interrogation techniques that have been approved by the administration.

Much of this information has dribbled out in press reports and through leaks. Why don't we set the record straight and let the American people have access to this information?

The administration ought to have a more orderly process in place for disclosing this information. It will require some structured reporting that is long overdue.

Finally, we know that many prison abuses were carried out by civilian contractors. We do not know who these people are, where they came from, or what they were trained to do. At a minimum, we should require these contractors, just as we require of our military personnel, to be trained in the laws of war and international humanitarian law. It is imperative they understand what the law requires when it comes to the treatment of foreign prisoners.

There is nothing complicated about this amendment. It simply sets out a more coherent framework with regard to how we treat foreign prisoners.

Now, let me turn to the portion of the amendment that I suspect will be subject to a tabling motion—the second-degree amendment.

There is a popular expression used when a group of people mean to work together to protect against possible harm or danger. It is called “circling the wagons,” and it comes from American pioneers, who used to form their wagons into a circle to better defend against an attack.

If a move is made to table this amendment, I would say that we are seeing a circling of the wagons by Republicans on behalf of the administration so that none of the information we seek can come out. I find that regrettable, but it is not surprising. It is an election year.

Americans are becoming increasingly concerned about the administration's handling of the war in Iraq: no weapons of mass destruction, the disingenuous link to the September 11 attacks, the leak of a CIA operative's name, the months of continued violence against Coalition soldiers after the President had proclaimed victory, and then the photographs out of Abu Ghraib. The American public is sick and tired of being lied to. They are sick of the secrecy. They want answers, but the wagons continue to circle.

This amendment requires the administration to cooperate with a thorough congressional investigation, by Republicans and Democrats alike, into the abuse of prisoners in U.S. custody. It requires the release of all documents relative to the scandal. All documents—not just a few selected by the administration when the pressure is on.

I would say this: Those who want to keep these documents hidden should know that at some point the day of reckoning is going to come. We are now at a crisis point. Is the Senate of the United States content to serve as an arm of the Executive Branch? Water flows downhill, and so does Government policy. Somewhere in the upper reaches of this administration a process was set in motion that seeped forward until it produced this scandal. To

put this scandal behind us, first we have to understand what happened. And we cannot get to the bottom of this until there is a clear picture of what happened at the top.

For many months, the Attorney General and other senior administration officials have refused to answer letter requests for documents relating to the interrogations of detainees abroad.

Earlier this month, the Attorney General appeared before the Judiciary Committee for the very first time since the war in Iraq began, but he refused to answer direct questions posed by Senators and refused to give us the documents we requested regarding the treatment and interrogation of prisoners. And not only that, he offered no legal challenge for his refusal, and practically challenged the Judiciary Committee to subpoena him.

When the Judiciary Committee met last week, I proposed a subpoena. Our Republican colleagues said it was too broad. We narrowed it down to 23 specific documents. When the chairman said it was premature, Senator FEINSTEIN proposed that we amend the subpoena to give the Attorney General more time to produce the documents voluntarily. Even then, it was voted down.

Yesterday, in a small gesture in response to public pressure, the White House released a tiny subset of the materials we sought. All of these should have been produced earlier. Much more remains hidden. Of the 23 we requested, we got 3, and of those 3, 2 had already been posted on the Internet. So, in effect, the administration gave us one voluntarily. Though this is a self-serving selection of documents, it is a beginning. I give the administration credit for that. But for the Judiciary Committee and the Senate to find the whole truth, we will need much more cooperation.

The documents released yesterday raised more questions than they answered. The White House released a January 2002 memo signed by President Bush calling for the humane treatment of detainees. But did the President sign any orders or directives after January 2002? Did he sign any with regard to prisoners in Iraq? Why won't the President's counsel comment on what the President said or ordered?

Why did Secretary Rumsfeld issue and later rescind tough interrogation techniques? How did these interrogation techniques come to be used in Iraq, where the administration maintains that it has followed the Geneva Conventions?

Where is the remaining 95 percent of the material requested by members of the Senate Judiciary Committee? Why is the White House withholding relevant documents that were produced after April 2003?

When are we going to stop sitting on our hands, becoming a rubberstamp for an administration cloaked in secrecy?

We have the legal right, the constitutional obligation, and the moral au-

thority to ask questions and demand answers today. We have to keep the pressure on until we get honesty and answers. I hope we will stand up and say that we are an independent body in the Senate and that we are willing to ask questions.

More and more, the American people can see that when you ask for 23 documents, and you only get 3, 2 of which have already been released by the press, that is not cooperation. It is not openness or cooperation when there is an arbitrary cutoff of documents after April 2003. It is not cooperation when we cannot find out why there is a difference between the advice that comes from Attorney General Ashcroft's office and what the President says he is going to do. And it is certainly not cooperation when we cannot get to the root of this terrible disconnect between stated policy and the photographs of the torture at Abu Ghraib.

I must say, I am suspicious because I asked about prisoner abuse months before the pictures came out. I have asked about Afghanistan. I was told that the U.S. was complying with the Torture Convention. But we now find that some prisoners died at the hands of some of the jailers.

I have asked the same questions about Guantanamo, including questions like why do we have hundreds and hundreds and hundreds of detainees, but we cannot find a single one—not even one—we feel confident enough to bring charges against before a military commission? It should be one of the easiest places in the world, if there is any evidence, to get a conviction. Not one trial out of those hundreds and hundreds and hundreds of prisoners?

Do we wonder why the rest of the world asks whether America has lost its moral compass? As an American, I do not think we have. I believe very strongly in the morality of our country. But I worry very much about what some of our leaders are holding back. I wish we would get all these matters out. I believe we would be better off if we did. We would look better in the eyes of the rest of the world. The United States is not a country that can and should condone torture. We are a country that expects to play by the highest rules because we ask others to, even when our enemies do not. Even during the two world wars, we treated our prisoners humanely.

This is a question we should ask: Why this sudden change in our policies?

I will close by reminding my colleagues that I think it was about a year ago the Secretary of Defense said: We will know if we are winning the war on terrorism if we are capturing or killing or stopping more terrorists than the madrasas are recruiting and churning out.

After Abu Ghraib, I asked the Secretary of Defense: By that definition, are we winning or not? He said he did not know. Obviously, we are not winning. There are recruiting posters all

over the Middle East, and even into Turkey, with photographs from Abu Ghraib.

If the administration will not come forward on its own, if the administration will not tell us what is happening, we—at least the men and women in the Senate—should have the courage to demand answers.

In the weeks since a courageous soldier-whistleblower and a probing journalist revealed to the world the abuses at Abu Ghraib prison, evidence has continued to seep out almost daily of similar mistreatment of prisoners in other U.S. military detention centers in Iraq, Afghanistan, and Guantanamo. White House officials and the political appointees in the Department of Defense have tried to deflect their own responsibility by singling out a few “bad apples” for punishment.

But bit by bit, the press is uncovering new information, and it all points toward those higher up in the chain of command.

On May 15 of this year, President Bush said, “The cruelty of a few has brought discredit to their uniform and embarrassment to our country.” That statement, it now turns out, was only partly true. Since then, we have learned a great deal about what was discussed and debated at the highest levels of our government.

While the President insists that he wants to get to the bottom of this, high-level White House and Pentagon officials refuse to answer questions or to disclose the relevant documents requested by the Congress.

They deny any pattern of illegality in the interrogation and treatment of prisoners, while it becomes clearer by the day that this scandal was set in motion by the actions of senior officials.

We learned that in October 2003, General Sanchez ordered the “harmonization” of military policing and intelligence in Iraq, placing military intelligence in control of key cellblocks at Abu Ghraib prison.

We learned from the Washington Post that, over the past 18 months, the Army has opened investigations into at least 91 cases of possible misconduct by soldiers against detainees in Iraq and Afghanistan. And the President talks about a few bad apples. The President’s comments have become harder and harder to swallow.

We learned on June 7 from the Wall Street Journal about a March 2003 Pentagon report contending that the President was not bound by laws prohibiting torture. This report went so far as to say that Government agents who tortured prisoners at the President’s direction cannot be prosecuted by the Justice Department.

The very next day, the Washington Post reported that in August 2002 the Justice Department advised the White House that torturing al-Qaida terrorists in captivity abroad “may be justified.” The memo argued that the President has absolute authority in the

“war against terrorism” and that international treaties against torture, which the United States ratified, “may be unconstitutional.” And, this report continued, Congress is completely powerless when the President acts as Commander in Chief.

That same day, the Attorney General made his first appearance before the Judiciary Committee in 15 months. He refused to give a copy of the Justice Department memo to members of the committee even though he was unable to say on what legal authority he based his refusal.

A week later, Republicans on the Judiciary Committee blocked a subpoena seeking these documents. Some called it a “fishing expedition,” even though we asked for a grand total of 23 documents.

The committee of jurisdiction had the opportunity and the responsibility to get us closer to the truth about why these abuses occurred, but the Republicans chose to circle the wagons instead of doing what is right for the country.

The stonewalling in the prison abuse scandal has been building to a crisis point. Yesterday, responding to public pressure, the White House has released a small subset of the documents that offers a glimpse into the genesis of this scandal. There are many items missing from this release, however, including all but three of the 23 items Judiciary Committee Democrats requested in the subpoena that was voted down by Republicans last week. Where are the 20 remaining documents? Perhaps the most ominous omission is the lack of any documents reflecting White House involvement in this issue since military action began in Iraq last year. The released documents do not include a single reference to the treatment or interrogation of detainees in Iraq, despite the heinous abuses at Abu Ghraib that we have all seen with our own eyes.

The White House released a Presidential memorandum dated February 7, 2002, directing that al-Qaida and Taliban detainees be treated humanely. But, did the President sign any directive regarding the treatment or interrogation of detainees after February 7, 2002? More specifically, did the President sign any directive after the United States invaded Iraq on March 19, 2003? These questions remain unanswered.

Last week we learned that Secretary Rumsfeld personally approved plans to hide some of the prisoners in Iraq so that they could not be visited by the International Committee of the Red Cross. They became nameless, faceless, and numberless. This is not only Kafkaesque, it was a direct violation of the Geneva Conventions. In a press conference last Thursday, Secretary Rumsfeld acknowledged his role in hiding these “ghost prisoners,” including one “high value” prisoner who was lost in custody for 7 months.

Yet in the same breath, Secretary Rumsfeld said, “I have not seen any-

thing that suggests that a senior civilian or military official of the United States of America . . . could be characterized as ordering or authorizing or permitting torture or acts that are inconsistent with our international treaty obligations or our laws or our values as a country.”

Secretary Rumsfeld should read the memos written by the Department of Justice and by his own legal staff at the Pentagon. The leaked and released documents reveal plenty to suggest that legal arguments were made and orders were signed in violation of our laws and treaty obligations. The few documents released by the White House yesterday serve to confirm earlier press reports and postings.

A year ago, after learning that the United States might be using techniques that pushed the limits of the Torture Convention, I wrote to the White House looking for assurances that the administration was complying with U.S. and international law. I received a letter that stated clearly and unequivocally that it was and would continue to do so.

In fact, we now know that the White House and the Pentagon were actively working to circumvent the law. Guidelines for interrogating prisoners were applied routinely in multiple locations in ways that were illegal. It is also clear that U.S. officials knew the law was being violated and for months, possibly years, did virtually nothing about it.

Instead, they detailed their lawyers to find legal loopholes and interpretations that would redefine torture and devise innocuous sounding labels for their interrogation techniques, such as “sensory deprivation” or “stress and duress.”

I wrote to the White House, the Pentagon and the CIA last June, a year ago, about the reported torture of Afghan prisoners by U.S. interrogators in December 2003. Two of those prisoners, both of young age, had died during interrogation. Others described being forced to stand naked in a cold room for days without interruption, with their arms raised and chained to the ceiling and their swollen ankles shackled. They said they were denied sleep and forced to wear hoods that cut off the supply of oxygen.

My letter, and subsequent letters, were either ignored or received responses which, in retrospect, bore no resemblance to the facts. Sixteen months later, the investigations of those deaths, ruled homicides, remain incomplete.

Just last week, in a case we had not known of previously, a CIA contractor was indicted for beating an Afghan detainee with a large flashlight. The Afghan, who had surrendered himself at the gates of a U.S. military base, died in custody on June 21, 2003, just days before I received a letter from the Bush administration saying that our Government was in full compliance with the Torture Convention.

Prisoners who are suspected of having killed or attempted to kill Americans do not deserve comforts. But the use of torture undermines our global efforts against terrorism and is beneath a great Nation.

It is illegal whether U.S. personnel engage in such conduct themselves or they hand over prisoners to the government agents of another country where torture is commonly used. That happened in 2002, when U.S. agents sent a Canadian citizen to Syria, letting others do the dirty work. Yet the White House will not provide us with the documents in which they concoct theories to justify turning over detainees to foreign nations that conduct torture.

There are many victims of this policy. First are the Iraqis, Afghans, and other detainees, some of them innocent of any crime, who were tortured or subjected to cruel and degrading treatment. The International Committee of the Red Cross reported that it was told by the U.S.-run Coalition Provisional Authority in Iraq that 70 to 90 percent of those in detention were innocent civilians who had been swept up in raids.

That was information that U.S. officials gave to the ICRC. It came from our own Government. It is no wonder that after the horrific images were broadcast around the world, the Pentagon started to clean out Abu Ghraib, releasing thousands of prisoners who apparently never should have been there.

We now know that many other Iraqis and Afghans died in U.S. custody, in conditions so abhorrent they conjure up images reminiscent of a Charles Dickens novel. Many of those deaths were never investigated.

The other victims of this policy are our own soldiers, who overwhelmingly perform their duties with honor and courage, and who now have been unfairly tarnished and endangered by these images and this scandal.

Our troops have also been tarnished by profiteering companies, none more brazen than Halliburton, which have reaped huge profits while our soldiers are risking their lives and losing their lives. Yet Republicans blocked Senate action to make war profiteering a crime and hold these people accountable.

Countless people around the world, especially in the Middle East, suspected that President Bush's decision to invade Iraq had a lot more to do with Iraqi oil than with any of the other reasons he gave that have since been proven false.

I do not share that view, but what better evidence to fuel those charges than Halliburton's noncompetitive contracts and waste. It is fraud and abuse on a scale that would shock the conscience of anyone except perhaps an Enron executive. Halliburton seems to regard the U.S. Treasury as its own personal bank account. With "cost plus" contracts, what do they care how much they overcharge the taxpayers? They are guaranteed their profits re-

gardless. It is the antithesis of patriotism.

And then there is America itself. Our Bill of Rights was the model for the Universal Declaration of Human Rights. Generations of Americans have tried to live up to its promise and to set an example for the world. The damage this administration has caused to our credibility and reputation as a nation of laws and of decency will take years to repair. Just as they have squandered so much of the world's respect and support for our country after September 11, so now have they squandered much of the human rights leadership that has taken so many years to painstakingly build. This is a travesty of monumental proportions.

The individuals who committed those acts are being punished, as they must be. But what of those who gave the orders or set the tone or looked the other way? What of the White House and Pentagon lawyers who tried to justify the use of torture in their legal arguments? These lawyers have twisted the law, advising the President that for an abuse to rise to the level of torture it must go on for months or even years, and be so severe as to generate the type of pain that would result from organ failure or even death.

Think about that, and you begin to realize how destructive and outrageous this is.

And what of the President? Last March, referring to the capture of U.S. soldiers by Iraqi forces, President Bush said, "We expect them to be treated humanely, just like we'll treat any prisoner of theirs that we capture humanely. If not, the people who mistreat the prisoners will be treated as war criminals."

At the same time, the President's own lawyer, ignoring the Torture Convention altogether, called the Geneva Conventions "quaint" and "obsolete." Today, soldiers who have spoken out about the crimes they witnessed and the involvement of their superiors have been threatened and punished by the Defense Department they have honorably served.

One need only review history to understand why the law makes no exception for torture. The torture of criminal suspects flagrantly violates the presumption of innocence on which our criminal jurisprudence is based, and confessions extracted through torture are notoriously unreliable.

Once exceptions are made for torture it is impossible to draw the line, and more troubling is who would be in charge of drawing it. If torture is justified in Afghanistan, why is it not justified in China, or Syria, or Argentina, or Miami?

If torture is justified to obtain information from a suspected terrorist, why not from his wife or children, or from his friends or acquaintances who might know of his activities or his whereabouts? This has happened in many countries, and decades later those societies are still trying to recover.

The United States cannot become the model of justice our forefathers envisioned if we continue to tolerate the twisted logic that has been given currency with increasing regularity in U.S. military prisons and in the White House since 9/11. Some argue it is a new world since those terrible attacks on our country 3 years ago. And to some degree, they are right, which is why we have reacted with tougher laws and better tools to fight this war. But do we really want to usher in a new world that justifies inhumane, immoral and cruel treatment as any means to an end?

As a nation of laws, and as the world's oldest democracy and champion of human rights, we must categorically reject the dangerous notion that is now in our midst, seeking our assent, or our silence, that torture can be legally justified and normalized.

President Bush has said he wants the whole truth, but he and his administration have been stonewalling from the top. The President must order all relevant agencies to release the memos from which these policies were devised.

He must clearly and unequivocally order all of his subordinates and every member of our armed services to adhere to our international treaty obligations including the Geneva Conventions, the Torture Convention, and all applicable U.S. laws. And finally, 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.

Only when these actions are taken will we begin to heal the damage that has been done.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Texas.

#### INVESTIGATION INTO TREATMENT OF IRAQI PRISONERS

Mr. CORNYN. Madam President, I want to take a few minutes to respond to some of the comments made by the Senator from Vermont because I do think the characterization he gave to some of what has gone on is at least incomplete. I disagree with some of his conclusions, and I want to point out why because I believe the Members of this body deserve to have a complete picture and at least have the benefit of considering alternative conclusions from those drawn by the Senator from Vermont.

I have the high honor of serving on both the Senate Armed Services Committee and the Judiciary Committee. Certainly, the Senator from Vermont is the ranking member of the Judiciary Committee, but I would remind this body that the Senate Armed Services Committee, under the leadership of our chairman, has been investigating the Abu Ghraib prison situation and the interrogation practices and policies of the U.S. Government since at least May 11. We have had a series of hearings there which have been very helpful