

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?