adoption system, to make this a reality for more and more orphans across the world.

I thank Senator BLUNT for his leadership, and we look forward to working on this issue for many years to come.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BLUNT. Mr. President, I thank Senator KLOBUCHAR. We will continue to work on this. We are glad it is so well-received and these are issues our colleagues pay close attention to. Whether it is domestic or international, we are going to continue to find ways to open the doors to more homes and to get access to more tire swings. I look forward to that work.

Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 331, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 331) expressing support for the goals of National Adoption Day and National Adoption Month by promoting national awareness of adoption and the children awaiting families, celebrating children and families involved in adoption, and encouraging the people of the United States to secure safety, permanency, and well-being for all children.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BLUNT. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 331) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

RECESS

Mr. BLUNT. Mr. President, I ask unanimous consent that the Senate stand in recess as under the previous order until 2:15 p.m. today.

There being no objection, the Senate, at 12:19 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mrs. CAPITO).

EXECUTIVE CALENDAR—Continued

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I am here to respond to the nomination of Steven Bradbury for a senior legal position in the U.S. Department of Transportation. I have had some experience with Mr. Bradbury, and in my experience, he is disqualified from serving in a legal government position of trust, such as he has been nominated for.

The Bush administration pursued a policy of detainee mistreatment that since has been acknowledged to include torture of detainees. The process that got the United States of America into a place where it was torturing detainees was a legal process that was full of mistakes and failures by the Office of Legal Counsel at the Department of Justice—by Mr. Bybee, by Mr. Yoo, and, following them, by Mr. Bradbury.

Let's start with just a word on the Office of Legal Counsel. Within the Department of Justice, the Office of Legal Counsel is seen as being the best of the best. The Department of Justice prides itself on attracting, training, and perfecting the skills of the best lawyers in America.

As a U.S. Attorney, I had the privilege of serving with a lot of absolutely spectacularly skilled lawyers and trial advocates just in the small Rhode Island U.S. attorney's office and working with others from the Department of Justice, and I have a very, very high opinion of Department of Justice lawyers and Department of Justice lawyering. But even within the expectation that the Department of Justice lawyering will be first rate, the Office of Legal Counsel is supposed to be a cut above. These are people who go into that office with the possibility that they will become U.S. Supreme Court Justices. These are people who come out of clerkships on the U.S. Supreme Court—one of the highest academic achievements a law student can have—and end up joining the Office of Legal Counsel. The Office of Legal Counsel ought to be held to a very high standard.

What happened when the Office of Legal Counsel was asked to take a look at the CIA torture program in the Bush administration was that it fell down or rolled over in virtually every respect. The factual investigation into what the CIA was actually doing was weak and ineffectual. The legal investigation into the past, into precedents, was—as I said in previous speeches at the time—fire-the-associate quality legal work. It is particularly bad coming from the Office of Legal Counsel because the Office of Legal Counsel is supposed to be the best of the best.

It is hard to say that these guys failed having tried their best. They just weren't smart enough to figure it out. They just weren't working hard enough. They just didn't know enough about legal research or scholarship. So, you know, nice try but you blew it, but no harm in it because we don't expect much of you to begin with.

That is certainly not the case with OLC. The array of memos that the OLC wrote—the Bybee, Yoo, and Bradbury memos—were calamitous failures of historical and legal research. For one thing, they failed to recognize and report that there had been prosecutions of Japanese military officers after World War II for torturing American soldiers. One of the techniques of torture for which those Japanese soldiers were prosecuted and convicted as torturers, as war criminals, was the use of the waterboard. You may be able to say that there were some different justifications. You may be able to say that there were some different circumstances, but to not even mention that, to not even do the research to find out that had taken place is a pretty bad legal failing.

One of the reasons was that they kept it so close hold that they didn't let military lawyers know what they were doing. One could argue that there is consciousness of guilt there, that they didn't want other lawyers to know what they were doing because they knew that what they were doing was shoddy legal work and they didn't want to be caught out in it. In fact, ultimately, a lot of those opinions were withdrawn.

The fact of the matter is that it was a failure to properly inform the President of the United States about this history of our country actually prosecuting Japanese soldiers for the type of conduct that the Department of Justice was approving that the CIA engage in. It wasn't just prosecutions of Japanese soldiers by American military tribunals. There were also prosecutions of American soldiers in the Philippines by courts-marshal for torture. Guess what. The conduct involved was waterboarding.

Again, perhaps you can say that there were some differences, that there were some distinctions, but the fact is, in memo after memo—including the wrapup memo that Bradbury wrote—that was not discussed. It was not disclosed, and it was not discussed.

You may say: Well, you know, it is asking an awful lot of the Office of Legal Counsel to go and look at history, to go and look at the practice of our military in prosecuting adversary officers or in prosecuting our own soldiers. After all, we are just the Department of Justice. That is the Department of Defense. What could we possibly learn from that?

Well, obviously, that would be wrong and, obviously, that would be a mistake, particularly when you look across that boundary to military law and see these examples right on point that they did not bother to discuss or disclose.

Then, it gets better still. The OLC memos failed to disclose prosecutions by the Department of Justice for waterboarding. This is not some case that never got reported someplace, that was just a trial, and you would have to look deep into your own records to try to find out what took place—perhaps, without a reported decision, just a verdict from the jury. This was a case that was extensively documented with writings by the trial court judge, a U.S. district judge in the State of Texas, that went up on appeal to the circuit court of appeals, and the U.S. circuit court of appeals wrote a decision on appeal of the district court's decision.

What were the facts? The facts were that there was a local sheriff. His last name was Lee. So the case was named United States v. Lee. Mr. Lee had gone into the business of waterboarding prisoners—strapping them in a chair, tipping them back, and pouring water over their faces to give the illusion of drowning. The court's decision over and over describes this conduct as torture. If you use legal search tools and look for the words ''water'' and ''torture,'' United States v. Lee comes up, and it is a circuit court of appeals decision.

How could they miss it? There are only two explanations that I can come up with. One is that they really did a shoddy job of workmanship, that they didn't bother to do basic legal research. That is why I have described this in the past as fire-the-associate quality work. If you haven't done the basic legal research to determine what the cases are on point on the question of whether the use of water on bound prisoners is torture, you haven't done much of a good job. The problem is that scenario is actually the best case scenario. The best case scenario is that they did such slipshod work at the Office of Legal Counsel that they didn't find a U.S. circuit court of appeals decision on point to the question upon which the OLC was advising the President of the United States. That is the best case scenario.

The worst case scenario is that they did find it and decided not to talk about it in their memos because you can read United States v. Lee and put it against those OLC memos, and I think any rational reader will find them impossible to correlate.

There is a real possibility that the Office of Legal Counsel decided that, because Cheney had decided on this torture program and because they were embarked on this torture program, they were going to have to deliver the legal opinion that allowed it to continue. If it meant ignoring a case that proved their opinion wrong, they were going to ignore the case, and they were going to go ahead with the opinion. As you can imagine, that is considerably worse than simply not finding the case.

We have never had a very good description of how this all came out. There was an OPR report from the Department of Justice that heaped condemnation on the various players here, but ultimately this question of what the obligation is of an OLC lawyer to fairly disclose what the relevant case law is in writing an OLC opinion was never reached. It was never reached because, at the end of this long and arduous process, the Department of Justice made, I think, a terrible decision.

There is a rule of professional conduct that is called the rule of candor to the tribunal. If you are a lawyer and you are going before a judge, you have an obligation to state the law fairly and accurately to the judge. If you are not being truthful to the judge about what the law is, that is a violation of professional conduct for which lawyers can be sanctioned. It applies to lawyers across the board. A hard-working lawyer with six or seven files under his arms, piling into a State district court to maybe run through three or four cases in that day before a busy judge, has the obligation of candor, and it includes an obligation to do adequate research, to actually have looked up the case law and to disclose it to the judge so that you are not misleading the court about the state of the law. That applies to lawyers across the country. The busiest, most distracted local lawyer and just a guy with a practice, maybe in a strip mall, who buzzes into court with a bunch of files under his arms—that lawyer is under that same obligation.

Yet the Office of Legal Counsel—this high temple of lawyering, this ''best of the best'' of the Department of Justice—made the decision that those lawyers, in their providing advice to the President of the United States, did not have the same obligation of candor that an ordinary, day-to-day, working lawyer in a local courthouse had to that local judge.

I believe that rule has since been reversed, and it is very good that it has been reversed because I think the President of the United States is entitled to at least the level of candor from these ''best of the best'' lawyers at the Office of Legal Counsel that a local judge is from the hard-working, overburdened, day-to-day lawyers who appear in front of him or her. That is not what the President got, not from this Office of Legal Counsel, not from Steve Bradbury.

Again, I don't know that we will ever know because that decision by the Department put to an end the investigation of the question of whether this failure amounted to professional malpractice by the OLC lawyers, but the options aren't great. These lawyers either did not do the work to discover the military tribunals, the courts-martial, and the Texas criminal prosecution by the Department of Justice, or, worse yet, they did discover those things and deliberately withheld that information so that they could give the opinion they thought they were supposed to give. It is about the worst thing a lawyer in that position could do, and until that is cleared up, I could not possibly support the nomination of Steven Bradbury to any position of trust in the Government of the United States.

I yield the floor.

The PRESIDING OFFICER. The majority whip.

TEXAS CHURCH MASS SHOOTING

Mr. CORNYN. Madam President, 2 days ago, I visited the community of Sutherland Springs, TX, which is a small, rural community about 35 miles from San Antonio, TX. We all remember the terrible shooting that occurred there just over a week ago at the First Baptist Church, an event that those in Sutherland Springs and across Texas and maybe even across the Nation will never forget. I hope we never forget it because I believe that those events were, by and large, preventable, and I will explain more about that in a moment.

What I saw during my visit and what I found to be so remarkable is that the community has already started the healing process. Already, the church building that was riddled with bullets and the bodies of people who were killed and injured has been turned into a memorial which will forever mark the terrible events of that day and honor the lives of those who lost their lives.

After an excruciating trial that the rest of us cannot even begin to comprehend, the attitude in Sutherland Springs is incredibly hopeful and resilient. First Baptist held its Sunday service just 7 days after the congregation lost 26 of its members. Can you imagine that—just a week later, showing up for another church service a week after a gunman shot up the church, killing 26 people and injuring 20 more.

I went there for no other purpose than to lend a shoulder to the mourning and to try to offer what little encouragement I could. Strangely, what happened is that the reverse occurred: They gave me more hope and inspiration than I ever could have imagined. This shows how the shooter's ultimate plan failed. Evil never triumphs.

Just ask Pastor Mark Collins, who pointed out that the First Baptist Church has been open for nearly 100 years but that on Sunday, the congregation smashed its alltime attendance record.

Ask Pastor Frank Pomeroy, who lost his 14-year-old daughter in the attack but was already back doing the Lord's work of consoling other members of his church when he himself lost his own 14-year-old daughter. Pastor Pomeroy said: ''We have the freedom to choose, and rather than choose darkness, like the young man did that day, we choose the light.'' He said: ''Love never fails.''

It was an emotional service, to be sure. It was an honor and, as I said, an inspiration to join the Sunday worship service and to visit the church that has been transformed into that stunningly beautiful memorial to commemorate the victims.

The day before, I had had a chance to visit with a number of victims—and their family members—who are recovering in local area hospitals. We cannot forget them as they continue to heal or forget the rest of the 20 who were wounded by the gunman that day—a man who was clearly deranged, was a convicted felon, someone who had been hospitalized for mental illness and had escaped, and someone who had been found guilty of domestic violence against his wife, including the fracturing of his infant stepson's skull.

We now know that when it comes to the shooter, there were plenty of warning signs. The gunman's former colleague has said that he was always on

edge and that he scared her both while he was in the Air Force and through disturbing social media posts afterward. There were multiple red flags along the way—school suspensions, threats of killing his superiors, depression, the abuse of animals, choking his wife, as I said, fracturing his stepson's skull, and doing time in a military prison. One thing is abundantly clear: We can do more when it comes to spotting these flags, including in the military.

Where the law currently provides that an individual who is convicted of a felony or convicted of domestic violence or somebody who has been found to be mentally ill by a court—we can make sure and do better to make sure that those individuals do not purchase a firearm. Current law disqualifies them, but unless the results are uploaded on the FBI's background check system, there is no way to catch them when they lie. They are asked when they purchase a firearm at a firearms dealer: Have you ever been convicted of a felony? Have you ever been convicted of domestic violence? Have you ever been committed for mental illness? If they lie and the background check system is simply silent, then there is no way to know and no way to stop them, and that is what happened to this shooter.

We know now that the Air Force and the other branches of the military are considering what additional steps to take to make sure this never happens again. I appreciate their prompt response, but it should never have come down to this.

Now we have to do our part to ensure that this sort of preventable disaster never happens again. Don't get me wrong—I don't believe we can somehow wave a magic wand or pass a law that will prevent manmade disasters in every instance in the future, but this one could have been prevented. We could have kept this shooter from buying a firearm through a legal firearms dealer. If the background check system had been accurate, he would not have been able to do so.

Today, I plan to introduce legislation to ensure that Federal agencies report and upload criminal records onto the background check system—records that are already required to be so but often that are not. As we know, this was a major problem that led to the rampage in Sutherland Springs. My bill would also reauthorize the two primary grant programs that help the States report and upload their own records and incentivize States to improve overall compliance.

We know that just down the road in Virginia a few years ago, the records of a young man who had been adjudicated as mentally ill by the State of Virginia had never been uploaded into the background check system. Like this shooter in Sutherland Springs, when he went to purchase a firearm, there was never a hit on the FBI's background check system, and he simply lied about his mental health record.

It has been estimated that some 7 million records—including at least 25 percent of felony convictions and a large number of convictions for misdemeanor domestic violence—have not been posted on the background check system. That is outrageous. I doubt that any of us knew this beforehand, but we know it now, and it is within our power to fix it. We can all agree that this has to change and that this cannot stand.

Let me be clear. I think that law-abiding gun owners, under the Second Amendment, can and should be allowed to purchase and possess firearms. As somebody who enjoys hunting and sports and shooting, I believe that every law-abiding American should possess the same right that I have to purchase firearms for recreation, for hunting, or for defending our families or property. In fact, that is what happened in Sutherland Springs. Sutherland Springs proves why guns can save lives when in the hands of law-abiding citizens. But if you have a long, documented history of dangerous behavior, if you are convicted of committing violent acts, under the law, you are not allowed to have guns. Today, we have to ensure that those laws will be enforced, and my bill will help to do that.

This is really an incredible story. When I went to Sutherland Springs, I learned more about Stephen Willeford, whom I have spoken about before. Stephen Willeford lived about a block from the First Baptist Church, and he heard the shooting. I think it was his daughter who alerted him to it. He got his AR–15 out of the gun safe in his home, and he ran about a block away while barefoot. He saw the shooter exit the church. He, in turn, decided that it was up to him because there was not anybody else to stop him.

Mr. Willeford, fortunately, is an NRA-certified shooting instructor and an expert marksman, and he shot and wounded the person who committed this mass atrocity, who then dropped his firearm, got in a truck, and led him on a high-speed chase. Thanks to Mr. Willeford and another Good Samaritan, they chased that shooter until ultimately the shooter took his own life. That shows you what can happen when law-abiding citizens—gun owners—can come to the aid of others. When the police are not present and there is nobody else around, Good Samaritans can help save lives.

TAX REFORM

Madam President, I would like to shift to a separate topic that the Senate will be addressing this week, and that is tax reform.

Last Thursday, the Senate Finance Committee introduced our proposal that would enable more Americans to keep more of their hard-earned paychecks—send less of their money to Uncle Sam here in Washington, DC.

Yesterday, the Senate Finance Committee on which I serve began the markup with the Tax Cuts and Jobs Act with a series of opening statements. Soon—tomorrow, perhaps—members of the committee will have an opportunity to consider and debate more than 300 filed amendments.

This morning, during the proceedings, some of my colleagues across the aisle complained about the process. They said: This isn't a bipartisan bill.

I said: That is because you have refused so far to participate in the process.

They said: The bill is secret.

I said: Well, you are going to have an opportunity to see it, read it, amend it, and debate it on the Senate floor and in committee.

They then had the audacity to claim that this was all just a giveaway to corporations. I suppose what they would rather see is American jobs go overseas because our punitive Tax Code punishes those businesses in the United States with the highest tax rate in the world at 35 percent. Countries such as Ireland, the U.K., and others have lowered their tax rates and lured American businesses, investment, and job creators overseas. Are we supposed to ignore that and accept it? It would be absolutely irresponsible to do so.

Unfortunately, I think some of our Democratic colleagues feel this is more about political posturing than it is about getting the economy growing again or seeing more money in our paychecks, more money that people can use for their family, for school, for retirement, or for whatever reason they want to use it.

Under our bill, a family of four at median income, which is roughly $70,000 a year, will see a savings of about 40 percent on their tax bill. That may be chump change to the folks here in Washington, DC, inside the beltway, but for hard-working Texans and hard-working Americans, that is money they can use and put to good use. We owe it to them. If we can come up with a fairer, simpler, more competitive tax code, we owe it to them to do so.

I mentioned the 300 amendments that have been filed. It is important to note that Chairman HATCH, just like Chairman BRADY in the House Ways and Means Committee, is taking this through the regular legislative process. In other words, anyone who is willing to participate in it can introduce amendments and get a vote on those amendments. You are not guaranteed to win, but you are guaranteed an opportunity to participate and to shape the product. That is the way the Senate and House are supposed to work. Once both legislative houses come up with their version of the tax bill, we reconcile those in a conference committee before we send it to the President. That is what we intend to do sometime before Christmas this year.

We have had 70 different hearings in the Senate alone, countless working groups, white papers published. We have been working on this for years. Now we finally have the opportunity to get it done.

What is so strange about the criticism that I have heard is that many of

our Democratic colleagues, both past and present, have called for many of the reforms included in this legislation that they are now criticizing. They were for it before they were against it.

Their previous support makes sense, because we know tax reform can work. A new study by the Tax Foundation found that our proposal would increase the size of the economy by 3.7 percent. It will increase wages for hard-working American families almost 3 percent. It will create 1 million new jobs. If we reduce the business rate and don't chase jobs overseas, we can attract more investment and more job creation here in America. The Tax Foundation estimates that this bill will produce nearly 1 million new jobs here in America. It will, incidentally, provide more than $1.2 trillion of lost revenue for the Federal Government, helping us with our deficit and our debt. The study suggests that families would see an after-tax income boost of 4.4 percent by the end of the decade. In Texas, for example, nearly 77,000 jobs are expected to be created by this plan with an income growth for middle-class families surpassing $2,500 a year.

Notably, by repealing the tax on poor Americans known as the individual mandate—half of it is paid by people who earn $25,000 or less, who can't afford to buy the government-mandated health insurance; they pay the penalty. That amounts to a $43 billion tax on poor people in America. We intend to repeal that and let them keep that $43 billion over the next 10 years in addition to the tax relief we are providing here.

It is not just the Tax Foundation that has pointed out the positive impacts of our plan; the nonpartisan Joint Committee on Taxation has too. Its analysis over last weekend suggests that moderate-income folks—not the high wage earners—would benefit most. In 2019, people in the middle of the income spectrum earning between $50,000 and $70,000 would see their taxes fall by 7.1 percent; those earning less—between $20,000 and $30,000—would see in excess of a 10-percent decline in taxes, according to that report.

I know our Democratic friends have trotted out their old, tired talking points and claimed that tax relief is only for the wealthy. But these facts show otherwise, and it is not an accident. We tried on purpose to make sure that every taxpayer, every person across the spectrum, no matter what their tax rate, sees a reduction in their taxes. The JCT's analysis proves that this is real, and while some of our colleagues can't resist the temptation to demagogue the issue, I would suggest that a more productive use of their time would be for them to join us to try to make this product even better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, I rise in opposition to the nomination of Steven G. Bradbury to be General Counsel of the Department of Transportation.

Typically, the Department of Transportation has been a bastion of bipartisan cooperation. As former Transportation Secretary Norman Mineta said: ''There are no Democratic or Republican highways, no such thing as Democratic or Republican traffic congestion.'' Similarly, it has been the overwhelming position of the U.S. Senate that torture is disqualifying for high office. Mr. Bradbury's nomination threatens both of these traditions.

Based on his role in the approval of enhanced interrogation techniques during the Bush administration, I believe Mr. Bradbury has failed to demonstrate the judgment that would merit the Senate to advise and consent on his nomination to any post. In addition, I am deeply troubled by his failure to commit to recuse himself from all matters related to his former client, the now-bankrupt airbag manufacturer, Takata, whose products are responsible for at least 16 deaths and 180 injuries.

From 2005 to 2009, Mr. Bradbury was the acting head of the Department of Justice's Office of Legal Counsel and was responsible for coauthoring numerous legal memos that authorize torture. During that period, enhanced interrogation techniques approved by the Office of Legal Counsel included techniques that constituted torture or cruel, inhumane, and degrading treatment. We would not accept such techniques being used on our servicemen and women held in captivity by our enemies. Yet Mr. Bradbury approved those techniques and, in doing so, endangered our men and women in uniform, and that danger still exists today.

Mr. Bradbury authored four separate memos authorizing the harshest form of detainee abuse, including waterboarding and other forms of cruel, inhuman, and degrading treatment. Not only did these legal memos authorize techniques that have been deemed abusive, they provided a green light for those willing to abuse enemy combatants in U.S. custody.

Following the revelations of prisoner abuse at Abu Ghraib, the Senate, led by Senator JOHN MCCAIN, passed the Detainee Treatment Act of 2005 by a vote of 90 to 9. That law prohibited detainee abuse by the military and other agencies.

However, legal opinions by Mr. Bradbury sought to provide a legal cover for the continued use of techniques that ran counter to the intent of that law. Our most respected military leaders have spoken out against the use of these unlawful interrogation techniques. A letter signed by 176 retired senior military leaders opposed the kind of torture techniques approved by Mr. Bradbury's Office of Legal Counsel.

Having had the privilege to serve in the Army of the United States, I believe they did this because they understood if we did it, our enemies would do it with even more gusto to our men and women, and it would be unconscionable to give them even a shred of credibility to point to and say: We are simply doing what you did to others.

Retired Marine Gen. Charles Krulak wrote in opposition to the Bradbury nomination, saying that the use of techniques approved by Mr. Bradbury ''not only violated well-established law and military doctrine, but also endangered U.S. troops and personnel, hindered the war effort, and betrayed the country's values, damaging the United States' stature around the world as a beacon of human rights and the rule of law.''

That is the voice of one marine, speaking from years of experience in combat, not simply to defend our ideals but to defend those men and women who serve today in uniform.

Secretary of Defense Mattis has expressed his full support for the Army Field Manual as the single standard for all U.S. military interrogations and has advised President Trump that such enhanced interrogation techniques are not needed to keep our country safe.

Under Mr. Bradbury's direction, DOJ's Office of Legal Counsel approved opinions on enhanced interrogation techniques that appear intended to meet the political inclinations of the White House rather than the intent of U.S. laws against such cruelty. Someone who has justified the use of torture, in spite of an act of Congress, should not be allowed to hold a position of responsibility in the U.S. Government. Indeed, it is for that reason that this body refused to approve Mr. Bradbury as Assistant Attorney General for the Office of Legal Counsel in 2008.

If approved as the General Counsel of the Department of Transportation, Mr. Bradbury would again be called upon to render legal opinions that require sound and independent judgment. Even forgetting for a moment his history of bending to the political desires of a strong-willed White House, his refusal to completely recuse himself from matters relating to his former client, Takata, means he would enter this office with a cloud of potential conflicts around him.

Public service is not an entitlement but a privilege. For Mr. Bradbury, the revolving door should swing shut. His lack of judgment at a critical time in the Nation's history has disqualified him from the privilege of holding high office in the current or any future administration.

Surely the American people deserve someone who reflects our national values and has demonstrated much better judgment than Mr. Bradbury.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. DUCKWORTH. Madam President, I thank my colleague, the Senator from Rhode Island, and I join him in strong opposition to the nomination of Mr. Steven Bradbury to be the general counsel of the U.S. Department of Transportation.

Mr. Bradbury is a deeply flawed nominee for many reasons, including his unwillingness to recuse himself from issues involving his former clients and dodging commitments to forgo accepting waivers for recusals. However, my opposition to his nomination is rooted in his troubling record while serving at the Department of Justice during the Bush administration.

As we know, Mr. Bradbury was Acting Attorney General at the Department of Justice from 2005 to 2007 and led the Office of Legal Counsel there from 2005 to 2009. When he was nominated by President George W. Bush to be Assistant Attorney General in 2004, his nomination was so unacceptable that the majority leader at the time offered to confirm 84 stalled nominees in exchange for the withdrawal of his nomination.

Let me repeat that. The Senate majority leader at the time was willing to accept 84 other nominees in exchange for President Bush withdrawing Mr. Bradbury's nomination.

What Senators objected to then—and the reason I am so strongly opposed to Mr. Bradbury's nomination now—is that Mr. Bradbury is the chief architect of the legal justification that authorized waterboarding and other forms of enhanced interrogation techniques we used to hear a lot about during the last Bush Presidency. For those who might not be familiar with the term ''enhanced interrogation,'' there is another term for it that most Americans probably are familiar with. It is called ''torture.''

The ''torture memos,'' as they are commonly referred to today, represent a dark period in our Nation's recent history that we must never repeat. In my opinion, his connection to these memos alone should disqualify Mr. Bradbury from government service. I understand he is nominated to serve at the Department of Transportation and not the Department of Justice, but his very willingness in the past to aid and abet torture demonstrates a failure of moral character that makes him dangerous to the American people and to our troops regardless of which agency he is nominated to serve in. Those torture memos displayed a disturbing disregard for the intent of Congress and flouted both international and U.S. law.

If confirmed, Mr. Bradbury will swear a solemn oath to serve the interests of the American public by providing honest and objective legal analysis to the Department and the administration. I doubt he can carry out that oath.

The American Government would, once again, rely on his counsel to make sure Department of Transportation employees do not subvert the law, the intent of Congress, or the U.S. Constitution. Unfortunately, he has let both the government and the American people down before, and I have no confidence that he is capable of carrying out this critically important role. Public servants are supposed to serve the public interests, not the political whims of any President, Democratic or Republican.

The public should be alarmed by Mr. Bradbury's history of demonstrating complete deference to a President's policy goals, and we in the Senate should do everything we can to prevent the likelihood of that history continuing in the Trump administration.

For my colleagues who may not be familiar with the programs Mr. Bradbury justified in his legal opinion, let me clarify. Detainees, in his opinion, could be sleep-deprived for up to 180 hours—approximately 7½ days—forced into stress positions. Sometimes they were shackled to the ceiling, subjected to rectal rehydration and feeding, confined in boxes the size of small dog crates. It was also Mr. Bradbury's legal opinion that led CIA personnel to conduct mock executions. His legal opinion led to one man being waterboarded to the point that he became ''completely unresponsive, with bubbles rising through his open, full mouth.'' His legal opinion also led to another man being frozen to death. Some of these abuses were authorized; others were not, but brutality, once sanctioned, is not easily contained.

In 2005, this body voted 90 to 9 to enact the Detainee Treatment Act to prohibit ''cruel, inhuman, or degrading treatment or punishment.'' That law was enacted after the Supreme Court decided that terrorism detainees in U.S. custody were protected by the Geneva Conventions. However, Mr. Bradbury still found legal loopholes to allow torture to continue.

Even the Department of Justice's own Office of Professional Responsibility criticized him for ''uncritical acceptance'' of the CIA's representations about the torture program. This is stunning, and it cannot simply be dismissed.

In testimony before the Senate Judiciary Committee in 2007, Mr. Bradbury defended the President's questionable interpretation of the Hamdan case, a case where the Supreme Court ruled that President Bush did not have the authority to set up military tribunals at Guantanamo Bay, by famously suggesting the ''President is always right.''

This rubberstamp mentality is extremely dangerous, especially in the Trump administration. What will Mr. Bradbury do if President Trump asks him to come up with a legal justification to abolish laws mandating seat belt use or to come up with ways to negate drunk driving laws?

Let me be clear. Mr. Bradbury didn't make America safer, and he certainly didn't make our men and women in uniform safer either—quite the opposite. The actions Mr. Bradbury helped to justify put our troops and diplomats deployed overseas in greater danger.

This is personal to me because perhaps most disturbingly Mr. Bradbury's efforts to enable torture compromised our Nation's values. Our Nation's military men and women are taught the laws of armed conflict, the proper way to care for detainees, the importance of acting in accordance with American values. Mr. Bradbury's actions at the Department of Justice undermined those values. This type of twisted legal wrangling done at a desk far from the field of battle puts larger targets on the backs of our troops. If captured, are they now at greater risk of being tortured themselves? How we treat prisoners under our control affects how our troops are treated.

Let me read to you Warrant Officer Michael Durant's account of what happened to him when he was shot down and captured in Mogadishu, Somalia. This is from his book.

DURANT'S fear of being executed or tortured eased after several days in captivity. After being at the center of that enraged mob on the day he crashed, he mostly feared being discovered by the Somalian public. It was a fear shared by Firimbi—

Who was one of the people guarding him—

The ''propaganda minister'' had clearly grown fond of him. It was something Durant worked at, part of his survival training. The two men were together day and night for a week. Firimbi spoke Italian and Durant spoke some Spanish, languages similar enough for them to minimally communicate.

Firimbi considered Durant a prisoner of war. He believed that by treating the pilot humanely, he would improve the image of Somalis in America upon his release.

Mr. Durant talked at length about how he was treated when he was captured in Somalia. He talked about going for days without his wounds being cared for, being dragged out of his downed Black Hawk by a mob. He talked about being beaten. He talked about someone sticking a rifle into his room and firing and shooting him, where he had to pull the round out of his own shoulder. He talked about being shackled.

All of that is still better than the treatment that Mr. Bradbury's justifications allow to happen now. It makes our troops' jobs harder and more dangerous, and their job is already pretty dangerous. Take it from me, our troops will do any job we ask of them, but we shouldn't be trying to make those jobs more difficult or dangerous than they already are.

I can tell you from firsthand experience, as someone who has bled behind enemy lines, legal gymnastics are a luxury not afforded our men and women in the field. They are at battle and, more importantly, these justifications do not protect our troops who are sitting on the floor of a POW cell. When you are stuck bleeding in a helicopter behind enemy lines, you hope and pray that if the enemy finds you first, they treat you humanely.

When I was in flight school, I began the first of several periods when I was trained in the art of survival, escape, evasion, and rescue. All pilots received this training. Then, when we were deployed to Iraq, we also, as members of

the U.S. troops overseas who were identified as most likely at risk of being captured among U.S. troops deployed there, received additional training. This is what the Army told me I could expect upon being captured: I could expect to be raped. I could expect to be beaten. I could expect to be starved.

As I sat in my helicopter thanking God that there was another aircraft there to pull me out, even as the enemy were jumping into their pickup trucks, speeding toward us to try to capture us, the very realities of what Mr. Bradbury was justifying happened to me. It is not something that you can look at from the safety and security of a desk in Washington. Our troops face this every single day. This is why this nomination is so incredibly, incredibly troubling.

If the warlords in Somalia recognized the Geneva Conventions and treated Chief Warrant Officer Durant's capture more humanely, what does that say about Mr. Bradbury and his willingness to allow far greater forms of torture than what the Somali warlords were willing to do?

Mr. Bradbury lacked the moral conviction in the Bush White House that Somali warlords possessed in Mogadishu, and I don't think he can be trusted to stand up for the values I fought to defend, especially not in the current administration.

You don't just need to take my word for it. Mr. Bradbury's record speaks for itself, but in case this point isn't clear enough, here is what retired Marine Corps General Charles Krulak wrote to the Commerce, Science, and Transportation Committee about this nominee just this year on June 26 of 2017:

In his role as acting head of the Department of Justice's Office of Legal Counsel . . . Mr. Bradbury displayed a disregard for both U.S. and international law when authorizing the use of so-called ''enhanced interrogation techniques'' to interrogate terrorism suspects.

The general goes on further to say:

These interrogation techniques, which Mr. Bradbury repeatedly approved, included methods that the United States has acknowledged and even prosecuted as torture and cruel, inhuman, and degrading treatment.

The use of these techniques not only violated well-established law and military doctrine, but also endangered U.S. troops and personnel, hindered the war effort, and betrayed the country's values, damaging the United States' stature around the world as a beacon for human rights and the rule of law. We know that the United States is strongest when it remains faithful to its core values. The use of torture and cruel, inhuman, and degrading treatment undermines those values, and Mr. Bradbury continually represented their use as legal and advisable during his time serving in the Bush Administration.

The general goes on to say further:

In recommending these techniques, Mr. Bradbury also displayed a discomforting deference to the executive branch's wishes, tailoring his legal recommendations to fit the White House's preferred outcome, and even testified in a Senate Judiciary Committee hearing that ''the President is always right.'' Mr. Bradbury's recommendations also contradicted the intent of Congress. In 2005, Congress passed the Detainee Treatment Act with a vote of 90–9. The law prohibited abuse of detainees by the U.S. military and agencies, but Mr. Bradbury authored a legal memo specifically designed to undermine the will of Congress and to provide the Bush Administration with authorization to continue using interrogation methods that constitute torture and cruel, inhuman, and degrading treatment.

I believe that this is more important than political affiliation. Mr. Bradbury has time and again shown his willingness to contravene established law and the intent of Congress in service to the will of the executive branch. Though the position to which he is nominated likely will not involve decisions on national security issues, I believe that based on his past governmental service, Mr. Bradbury is not fit for this political office. I ask you respectfully to oppose his nomination.

That letter is signed:

Semper Fidelis,

CHARLES C. KRULAK,
General, USMC (Ret.)
31st Commandant of the Marine Corps.

Also opposing Mr. Bradbury's nomination are 14 former national security law enforcement, intelligence, and interrogation professionals whose experience include service in the U.S. military, the Federal Bureau of Investigation, the Central Intelligence Agency, the Drug Enforcement Administration, the Defense Intelligence Agency, the Army Criminal Investigation Command, and the Naval Criminal Investigative Service.

They wrote:

We write today to express our opposition to the nomination of Mr. Steven Bradbury to serve once again in a position of significant responsibility within the U.S. government as general counsel of the Department of Transportation.

Our opposition stems from the necessary judgment and personal courage this office requires to provide candid and objective legal advice to policymakers that may be seeking politically expedient policy solutions.

We dedicated our professional lives to keeping our nation safe. That work demanded using every resource at our disposal, including and especially our moral authority. Our enemies act without conscience. We must not.

Mr. Bradbury spent many years serving in the Department of Justice—including as acting head of the Office of Legal Counsel—during the George W. Bush Administration.

In this position, he prepared official memoranda that provided legal cover for other agencies in the U.S. Government to employ a program of interrogation tactics that amounted to torture or cruel, inhuman, or degrading treatment.

These brutal methods—which included waterboarding—fundamentally violated domestic and international law governing detainee treatment and caused untold strategic and operational harm to our national security.

As former interrogators, intelligence, and law enforcement professionals with extensive firsthand experience in the field of interrogation, we were shocked by Mr. Bradbury's attempt to defend the use of the waterboard and other torture tactics based on the incorrect assertions that their use would not cause severe physical pain or suffering and would produce valuable intelligence.

In our professional judgment, torture and other forms of detainee abuse are not only immoral and unlawful, they are ineffective and counterproductive in gathering reliable intelligence. They also tarnish America's global standing, undermine critical alliances, and bolster our enemies' propaganda efforts.

If the Senate confirms Mr. Bradbury, it would send a clear message to the American public that authorizing the use of torture is not only acceptable, but is not a barrier to advancement into the upper ranks of our government.

We understand that Mr. Bradbury did not act alone in authorizing torture, but as his nomination is before you, we ask you to take this opportunity to reaffirm our commitment to the ideals we strive to uphold by rejecting his nomination.

Torture is not a partisan issue. Our respect for human dignity is timeless, and we must never risk our national honor to prevail in any war. Your vote to reject this nomination would reflect the morally sound leadership that this country needs and would not forget.

In another letter dated July 27, 2017, to the Commerce Committee, retired U.S. Air Force Col. Steven Kleinman wrote:

I write to express my deep concerns about confirming Mr. Bradbury to serve once again in a position of significant trust and responsibility within the U.S. Government.

I do not for a moment question his legal credentials; rather, my apprehension centers around the equally important elements of judgment and personal courage necessary to provide legal advice that might run counter to the positions advocated by his superiors.

History records that we have been down this road once before with Mr. Bradbury and he was found sadly wanting.

As I trust you are aware, Mr. Bradbury served in senior positions within the Department of Justice—including as acting head of the Office of Legal Counsel—during the George W. Bush Administration.

In that capacity, he prepared official memoranda that provided legal cover for other agencies of the U.S. Government to implement a program of severely coercive interrogation practices.

These practices included an array of tactics—to include waterboarding—that fundamentally violated domestic and international law prohibiting cruel, inhuman, and degrading treatment.

As an officer with extensive experience in both strategic interrogation and in training members of the U.S. Armed Forces to resist hostile interrogation, I was taken aback by Mr. Bradbury's attempt to defend the use of the waterboard based on wholly unfounded conjecture that it would not cause severe physical pain or suffering.

If the committee were to favorably report this nomination to the full Senate, it would be sending a clear and undeniable message to the world, and, more importantly, to the American public: Definitive action to support the institutional use of torture is acceptable.

Clearly, Mr. Bradbury acted in concert with an untold number of others within our government, and I am not asking that he be singled out for his actions.

At the same time, his nomination is the one before you . . . and with it an opportunity for the committee members to act on behalf of all Americans in taking a vital step toward reclaiming the moral high ground.

From the perspective of this American, the debate over torture is not one that can be subject to partisan debate. Instead, torture is something that is so inherently wrong and

so contrary to this nation's traditional values that it can be one issue around which the entire country—and the U.S. Senate—can rally.

Your vote to unfavorably report this nomination to your colleagues would be a much-needed demonstration of ethical leadership that would not soon be forgotten.

It is signed ''Very Respectfully, Steven M. Kleinman, Colonel, U.S. Air Force, Retired.''

Former Navy general counsel Alberto Mora wrote:

While acting as the head of the Office of Legal Counsel, Steven Bradbury proved himself to be an advocate for the brutal treatment of detainees, and then, when the Congress enacted the McCain amendment to strengthen the legal prohibitions against cruelty, he counseled the administration on legal strategies on how to circumvent the law and the Congress's will.

In exercising its advice and consent duty with respect to the nominations of senior counsel to serve in this, or any, administration, the Senate should take care to confirm only those individuals with a clear record of respect for the law and for the power of Congress as a coordinate and equal branch of government. Steven Bradbury's record, unfortunately, demonstrates a disrespect for both.

In a June 22, 2017, letter to the Commerce Committee, 14 human rights organizations highlighted their opposition to Mr. Bradbury's nomination:

We write to express our serious concerns regarding the nomination of Steven G. Bradbury for general counsel of the Department of Transportation (DOT).

Mr. Bradbury's role in justifying torture and cruel, inhuman, or degrading treatment of individuals held in U.S. custody marked him as an architect of the torture program.

Not only should the Senate be concerned about confirming a nominee who had a central role in the criminal violation of human rights, but his work during that period calls into question his ability to provide the kind of rigorous, independent legal analysis that is required of any top government lawyer.

Mr. Bradbury was acting head of the Department of Justice's (DOJ) Office of Legal Counsel (OLC) from 2005 to 2009. During that time, Mr. Bradbury wrote several legal memoranda that authorized waterboarding and other forms of torture and cruel, inhuman, or degrading treatment. As such, he is most prominently—and correctly—known as one of the authors of the ''torture memos.''

His analysis directly contradicted relevant domestic and international law regarding the treatment of prisoners and helped establish an official policy of torture and detainee abuse that has caused incalculable damage to both the United States and the prisoners it has held.

Mr. Bradbury's role in the torture program, even then, was notorious—so much so that the Senate refused to confirm him as assistant attorney general for the Office of Legal Counsel during the Bush Administration.

The Senate now knows even more about Mr. Bradbury's record, and the harm caused by his opinions, based on oversight by the Senate Select Committee on Intelligence and its report on the Central Intelligence Agency's use of torture and abuse.

In Mr. Bradbury's time as acting head of the OLC, he demonstrated an unwavering willingness to defer to the authority and wishes of the president and his team instead of providing objective and independent counsel.

During congressional testimony in 2007, Mr. Bradbury responded to questions about the president's interpretation of the law of war by declaring, ''The President is always right''—a statement that is as outrageous as it is inaccurate.

The DOJ Office of Professional Responsibility reviewed Mr. Bradbury's ''torture memos'' and determined they raised questions about the objectivity and reasonableness of Mr. Bradbury's analyses; that Mr. Bradbury relied on uncritical acceptance of executive branch assertions; and that in some cases Mr. Bradbury's legal conclusions were inconsistent with the plain meaning and commonly held understandings of the law.

Senior government officials from the Bush Administration who worked with Mr. Bradbury have said that they had ''grave reservations'' about conclusions drawn in the Bradbury torture memos and have described Mr. Bradbury's analysis as flawed, saying the memos could be ''considered a work of an advocacy to achieve a desired outcome.''

Moreover, Mr. Bradbury's 2007 torture memo was written with the purpose of evading congressional intent and duly enacted Federal law.

The Detainee Treatment Act of 2005, legislation that passed the Senate with a vote 90–9, stated, ''No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment.'' However, Mr. Bradbury's memo explicitly allowed the continuation of many of the abusive interrogation techniques that Congress intended to prohibit in the DTA.

Perhaps most concerning from a congressional oversight perspective, Mr. Bradbury affirmatively misrepresented the views of members of Congress to support his legal conclusions.

Specifically, in his 2007 memo, he relied on a false claim that when the CIA briefed ''the full memberships of the House and Senate Intelligence Committees and Senator MCCAIN . . . none of the Members expressed the view that the CIA detention and interrogation program should be stopped, or that the techniques at issue were inappropriate.''

In fact, Senator MCCAIN had characterized the CIA's practice of sleep deprivation as torture both publicly and privately, and at least four other Senators raised objections to the program.

As a senior government lawyer, Mr. Bradbury authorized torture and cruel treatment of detainees in violation of U.S. and international law.

Mr. Bradbury demonstrated either an inability or an unwillingness to display objectivity and reasonableness in evaluating the president's policy proposals.

We ask that in reviewing Mr. Bradbury's nomination for general counsel of the Department of Transportation, another profoundly important position of public trust, you take these serious and disturbing factors into consideration.

That letter was signed by the American Civil Liberties Union, Appeal for Justice, Center for Constitutional Rights, Center for Victims of Torture, the Constitution Project, the Council on American-Islamic Relations, Defending Rights and Dissent, Human Rights First, Human Rights Watch, the Leadership Conference on Civil and Human Rights, the National Religious Campaign Against Torture, Open Society Policy Center, Physicians for Human Rights, and Win Without War.

Earlier this year, a group of 176 of the most respected retired generals and admirals wrote to then President-Elect Trump urging him to reject the very kinds of torture and cruel treatment Mr. Bradbury authorized. They wrote:

We have over six thousand years of combined experience in commanding and leading American men and women in war and in peace, and believe strongly in the values and ideals that our country holds dear. We know from experience that U.S. national security policies are most effective when they uphold these ideals.

For these reasons, we are concerned about statements made during the campaign about the use of torture or cruel, inhuman, or degrading treatment of detainees in U.S. custody. The use of waterboarding or any so-called ''enhanced interrogation techniques'' is unlawful under domestic and international law.

Opposition to torture has been strong and bipartisan since the founding of our republic, through the administration of President Ronald Reagan to this very day. This was reinforced last year when the Congress passed the McCain-Feinstein anti-torture law on an overwhelmingly bipartisan basis.

Torture is unnecessary. Based on our experience—and that of our Nation's top interrogators, backed by the latest science—we know that lawful, rapport-based interrogation techniques are the most effective way to elicit actionable intelligence.

Torture is also counterproductive because it undermines our national security. It increases the risk to our troops, hinders cooperations with allies, alienates populations whose support the United States needs in the struggle against terrorism, and provides a propaganda tool for extremists who wish to do us harm.

Most importantly, torture violates our core values as a nation. Our greatest strength is our commitment to the rule of law and to the principles embedded in our Constitution. Our servicemen and women need to know that our leaders do not condone torture or detainee abuse of any kind.

I know some people might not understand why these enhanced interrogation techniques are a problem so let me just take a few moments to explain what they are.

Waterboarding. Waterboarding is a well-known torture tactic. Waterboarding creates the sensation of asphyxiation or drowning. The detainee is immobilized on his back and water is poured over a cloth covering his face. Far from the ''dunk in the water'' Dick Cheney has referred to, internal CIA reports describe instances of waterboarding as ''near drownings.''

Detainees were often waterboarded repeatedly. Khalid Shaikh Mohammed was waterboarded at least 183 times. Another detainee, Abu Zubaydah, was waterboarded so often that it led him at least once to become completely unresponsive, with bubbles rising through his mouth. This torture tactic may also lead to bleeding from the ears, severe lung and brain damage, and lasting psychological damage.

If we waterboard our prisoners, they will waterboard our men and women when they become prisoners.

Walling. Walling is a torture technique that involves encircling the detainee's neck with a collar or a towel and slamming him against the wall. Despite a requirement to use a false wall to avoid injury, Abu Zubaydah

was slammed against a concrete wall. Even in the event of using a false wall, detainees suffered extreme injury. Abu Ja'far al-Iraqi suffered from an edema, or swelling on his head, as a consequence of walling with the use of a false wall.

If we use this technique on our prisoners, they will use this technique on our men and women in uniform if they were to capture them.

Sleep deprivation. The detainees were kept awake by being shackled, forced to stand, or kept in stressed positions in an attempt to destroy their capacity for psychological resistance. This was routinely combined with nudity and/or round-the-clock interrogation. Although not overtly violent, extended periods of sleep deprivation can have painful and damaging mental and physical effects. After being forced to stand for 54 hours, Abu Ja'far al-Iraqi required blood thinners to treat the swelling in his legs. Following 56 hours without sleep, Arsala Khan suffered from violent hallucinations of dogs mauling and killing his family.

If we—the United States of America—use this technique on our prisoners, our enemies will use this technique on our men and women in uniform should they be captured.

Standing on broken feet. As an extreme form of sleep deprivation, two detainees—Abu Hazim and Abd al-Karim—were forced to stand for hours with broken feet. Despite recommendations that he avoid weight bearing for 3 months, Abu Hazim underwent 52 hours of standing sleep deprivation on his broken foot barely a month after his diagnosis. While injured, these detainees were also subject to walling.

Again, when we do this to our prisoners, our enemies would do this to our troops.

Solitary confinement. Detainees were regularly confined with no opportunity for social interaction. This is often combined with nudity, sensory deprivation, total darkness, or constant light, and shackling. Abu Zubaydah was isolated naked in a cell with bright lights and white noise or loud noise playing. At one point, he was kept for 47 days in total isolation.

The dangers of solitary confinement were recognized by the U.S. Supreme Court as early as 1890 in In re Medley, where the Court described prisoners becoming violently insane, committing suicide, and the partial loss of their mental activity.

If we do this to our prisoners, they would do it to our troops.

Stress positions. These positions are designed to cause pain and discomfort for extended periods of time and were often used in combination with sleep deprivation. Detainees were shackled with their arms over their heads, forced to stay standing, or were placed in cramped confinement, such as coffin-sized boxes.

Abd al-Rahim al-Nashiri was subjected to improvised stress positions that not only caused cuts and bruises but led to the intervention of a medical officer who was concerned that his shoulders would be dislocated. Abu Zubaydah was confined to a coffin-shaped box for a total of over 11 days.

If we do this to our prisoners—and Mr. Bradbury justified this—they would do it to our troops.

Rectal feeding and rectal exams. Rectal feeding was used for prisoners who refused food and entails insertion of a tube containing pureed food into the detainee's anal passage. This was used for behavioral control, without medical necessity, despite risks of damage to the colon and rectum or of food rotting inside the digestive tract. One detainee, Mustafa Ahmed al-Hawsawi, suffered a rectal prolapse likely caused by overly harsh rectal exams.

If we do this to our prisoners—and Mr. Bradbury's memo made it so we could—they would do this to our troops should our troops be captured by the enemy.

Nudity. This form of sexual humiliation relies on cultural and religious taboos and required detainees to be fully or partially naked during interrogations or when shackled. Nudity was also regularly combined with cold temperatures and cold showers. One detainee, Gul Rahman, died of suspected hypothermia following 48 hours of sleep deprivation, half naked, in an extremely cold room.

Again, if we do this to our prisoners—and Mr. Bradbury wrote the legal justification allowing this to happen—they will do this to our troops. We do not want this man in the U.S. Government making more decisions about what is right and what is wrong and how to protect the American public. If he was willing to do this and allow this to happen, what can we trust him to have good judgment on?

In a September 6, 2006, article by Sean Alfano at CBS/AP entitled ''U.S. Army Bans Torture Of Prisoners,'' he wrote:

A new U.S. Army manual bans torture and degrading treatment of prisoners, for the first time specifically mentioning forced nakedness, hooding and other procedures that have become infamous since the Sept. 11, 2001 terrorist attacks. Delayed more than a year amid criticism of the Defense Department's treatment of prisoners, the new Army Field Manual was released Wednesday, revising [a previous] one from 1992.

It also explicitly bans beating prisoners, sexually humiliating them, threatening them with dogs, depriving them of food or water, performing mock executions, shocking them with electricity, burning them, causing other pain and a technique called ''water boarding'' that simulates drowning, said Lt. Gen. John Kimmons, Army Deputy Chief of Staff for Intelligence.

Officials said the revisions are based on lessons learned since the U.S. began taking prisoners in response to the Sept. 11, 2001, attacks on the United States.

Release of the manual came amid a flurry of announcements about the U.S. handling of prisoners, which has drawn criticism from Bush administration critics as well as domestic and international allies.

The Pentagon also announced an overall policy statement on prisoner operations. And President George W. Bush acknowledged the existence of previously secret CIA prisons around the world where terror suspects have been held and interrogated, saying 14 such al Qaeda leaders had been transferred to the military prison at Guantanamo Bay and will be brought to trial.

An international outcry about prisoner rights began shortly afterward. Human rights groups and some nations have urged the Bush administration to close the prisons at the U.S. naval base in Guantanamo Bay, Cuba, since not long after it opened in 2002 with prisoners from the campaign against al Qaeda in Afghanistan. Scrutiny of U.S. treatment of prisoners shot to a new level in 2004 with a release of photos showing U.S. troops beating, intimidating and sexually abusing prisoners at Abu Ghraib in Iraq—and then again with news of secret facilities.

Though defense officials earlier this year debated writing a classified section of the manual to keep some interrogation procedures a secret from potential enemies, Kimmons said Wednesday that there is no secret section to the new manual.

Defense Secretary Donald H. Rumsfeld has said from the start of the counter-terror war that prisoners were treated humanely and in a manner ''consistent with Geneva Conventions.''

But President George W. Bush decided shortly after the Sept. 11 attacks that since it was not a conventional war, ''unlawful enemy combatants'' captured in the fight against al Qaeda would not be considered prisoners of war and thus would not be afforded the protections of the convention.

The new manual, called ''Human Intelligence Collector Operations,'' applies to all the armed services, not just the Army. It does not cover the Central Intelligence Agency, which also has come under investigation for mistreatment of prisoners in Iraq and Afghanistan and for allegedly keeping suspects in secret prisons elsewhere around the world since the Sept. 11 attacks.

Sixteen of the manual's 19 interrogation techniques were covered in the old manual and three new ones were added on the basis of lessons learned from the counter-terror war, Kimmons said.

The additions are that interrogators may use the good-cop/bad-cop tact with prisoners, they may portray themselves as someone other than an American interrogator, and they may use ''separation,'' basically keeping prisoners apart from each other so enemy combatants can't coordinate their answers with each other.

The last will be used only on unlawful combatants, not POWs, only as an exception and only with permission of a high-level commander, Kimmons said.

The Pentagon also on Wednesday released a new policy directive on detention operations that says the handling of prisoners must—at a minimum—abide by the standards of the Geneva Conventions and lays out the responsibilities of senior civilian and military officials who oversee detention operations.

''The revisions . . . took time,'' Deputy Assistant Secretary of Defense for Detainee Affairs Cully Stimson said at the briefing. ''It took time because it was important to get it right, and we did get it right.''

It is interesting that the Department of Defense took the time and the effort to rewrite their manuals as a result of the abuses that came about following Mr. Bradbury's legal justification for the use of torture.

Here is what the Army Field Manual 2–22.3 says. This is the Human Intelligence Collector Operations manual,

dated September 6, 2006. This is what the Army now teaches our soldiers:

All captured or detained personnel, regardless of status, shall be treated humanely and in accordance with the Detainee Treatment Act of 2005 and DOD Directive 2310.1E, ''Department of Defense Detainee Program,'' and no person in the custody or under the control of DOD, regardless of the nationality or physical location, shall be subject to torture or cruel, inhuman, or degrading treatment or punishment, in accordance with and as defined in US law.

All intelligence interrogations, debriefings, and tactical questionings to gain intelligence from captured or detained personnel shall be conducted in accordance with applicable law and policy.

Applicable law and policy include US law; the law of war; relevant international law, relevant directives, including DOD Directive 3115.09, ''DOD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning''; DOD Directive 2310–1E, ''The Department of Defense Detainee Program''; DOD instructions; and military execute orders including FRAGOs. Use of torture is not only illegal but also it is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the HUMINT collector wants to hear. Use of torture can also have many possible negative consequences at national and international levels.

All prisoners and detainees, regardless of status, will be treated humanely.

Cruel, inhuman, and degrading treatment is prohibited. The Detainee Treatment Act of 2005 defines ''cruel, inhuman or degrading treatment'' as the cruel, unusual, and inhumane treatment or punishment provided by the Fifth, Eighth, or Fourteenth Amendments to the U.S. Constitution.

This definition refers to an extensive body of law developed by the courts of the United States to determine when, under various circumstances, treatment of individuals would be inconsistent with American constitutional standards related to concepts of dignity, civilization, humanity, decency, and fundamental fairness.

All DOD procedures for treatment of prisoners and detainees have been reviewed and are consistent with these standards as well as our obligation under international law as interpreted by the United States.

Questions about applications not resolved in the field by reference to the DOD publications must be forwarded to higher headquarters for legal review and specific approval by the appropriate authority.

Isn't it amazing that it took the Army to contradict and to come up with the procedures to counter the very actions Mr. Bradbury was willing to condone? And we want this man back in government? He doesn't belong back in government. This is a man who has, as his first priority, not America's values, not the morality of this Nation, not humanity—his first value is: What is it that my boss wants me to say, and I will find a way to do it. He said just as much in testimony. That is not who we want as a top lawyer over in the Department of Transportation. It is simply not acceptable.

In that same Army Field Manual, there is a section that talks about how interrogation should be conducted and the prohibited actions included, which are not limited to forcing the detainee to be naked, to perform sexual acts, or pose in a sexual manner, placing hoods or sacks over the head of a detainee, using duct tape over the eyes, applying beatings, electric shock, burns, or other forms of physical pain, waterboarding, using military working dogs, inducing hypothermia or heat injury, conducting mock executions, depriving the detainee of necessary food, water, or medical care.

The field manual goes on to say:

While using legitimate interrogation techniques, certain applications of approaches and techniques may approach the line between permissible actions and prohibited actions. It may often be difficult to determine where permissible actions end and prohibited actions begin. In attempting to determine if a contemplated approach or technique should be considered prohibited, and therefore should not be included in an interrogation plan, consider these two tests before submitting the plan for approval:

If the proposed approach technique were used by the enemy against one of your fellow soldiers, would you believe the soldier had been abused?

Could your conduct in carrying out the proposed technique violate a law or regulation? Keep in mind that even if you personally would not consider your actions to constitute abuse, the law may be more restrictive.

I wish those questions had been made available to Mr. Bradbury when he was writing his memo, because the actions he condoned in his memo certainly would have failed this very simple two-question test.

The manual says:

If you answer yes to either of these tests, the contemplated action should not be conducted. If the HUMINT collector has any doubt that an interrogation approach contained in an approved interrogation plan is consistent with applicable law, or if he believes that he is being told to use an illegal technique, the HUMINT collector should seek immediate guidance from the chain of command and consult with the SJA to obtain a legal review of the proposed approach or technique. . . . If the HUMINT collector believes that an interrogation approach or technique is unlawful during the interrogation of a detainee, the HUMINT collector must stop interrogation immediately and contact the chain of command for additional guidance.

This is not something that Steven Bradbury did or has even now stated that he wished he had done, because his memo, which allowed all the torture techniques I have already detailed, would truly have failed these two tests, and he would have failed in moving forward with his memo to do the basic thing, which is to stop an illegal activity from occurring.

At this point, the Army Field Manual provides some caution:

Although no single comprehensive source defines impermissible coercion, certain acts are clearly prohibited. Certain prohibited physical coercion may be obvious, such as physically abusing the subject of the screening interrogation. Other forms of impermissible coercion may be more subtle, and may include:

Threats to turn the individual over to others to be abused; subjecting the individual to impermissible humiliating or degrading treatment; implying harm to the individual or his property. Other prohibited actions include implying a deprivation of applicable protections guaranteed by law because of a failure to cooperate; threatening to separate parents from their children; or forcing a protected person to guide US forces in a dangerous area. Where there is doubt, you should consult your supervisor or servicing judge advocate.

This is the problem. Mr. Bradbury, in writing this memo, showed absolutely no attempt or even desire to figure out whether what he was trying to justify was truly legal, in keeping with American values, or was the right thing to do for the United States. He simply moved forward with drafting this memo because the President of the United States wanted it to happen. That is not the democracy we live in. We don't live in a dictatorship. We are the greatest democracy on the face of the Earth because we are individuals who have the right to exercise a moral authority and to speak up. Mr. Bradbury showed none of that.

Even in testimony, he has expressed no regrets in the legal wranglings that he went through in order to justify torture. He showed no introspection, no thought as to whether it was the right thing to do. As far as he was concerned, his superiors wanted him to do this, so he did it.

What is he going to do at the Department of Transportation? What is he going to do when someone there tells him: The airbag manufacturers have decided it is just too expensive, so we need you to come up with justification for us to stop using airbags?

What he is going to do when people come to him and say: We really want to increase alcohol sales, so I think we should get rid of drunk driving laws? What he is going to do?

He has shown that he is willing to do whatever his superiors have asked him to do and that he is just the right guy for the job if they want a lawyer who is going to execute legal gymnastics to find a way to make something happen. Do we really want that person at the very top of the legal department of the Department of Transportation—not to mention the fact that once he is Senate-confirmed and in the Department of Transportation, it is that much easier to move him to another Senate-confirmed position, and there is no guarantee that he will not make his way back over to the Department of Justice to create more harm.

I ask my colleagues, if you care about this country, if you care about our troops who are in harm's way right now, please understand what it means to our troops who are downrange right now in all corners of the globe—facing the enemy, facing potentially being captured in the execution of their duties, protecting and defending our

great United States—to know that the enemy believes that America tortures and to know that they are at that much greater risk, if they were to be captured, to be tortured themselves.

I can't oppose Mr. Bradbury's nomination strongly enough. His most prominent, consequential work was to justify unlawful torture and detainee abuse. His comments in testimony during his confirmation hearings did not alleviate any of my concerns.

I know many of my colleagues are considering voting yes on this man because they think: Well, he is going to be over in the Department of Transportation. That was years ago; he will not have to write legal justification for the use of torture again, and we have passed laws about it since then. But he has shown that despite existing laws, he was able to find a way to get around them to justify torture. How do we know he will not do the same thing again at the Department of Transportation when it comes to public safety? What about our kids who ride school buses to school? They deserve protections.

The American public deserves protections. What they don't deserve is a man who has no moral compass when it comes to what is right and what is wrong but only a compass that asks: What do my bosses want me to do? That is not what the American people need. That is certainly not something we should be voting for.

If, in conversations with Mr. Bradbury, he promised you that he would be independent, I just ask you to look at his record. He has never been independent. In fact, when asked if he would recuse himself from various cases, he, in committee, avoided answering those questions, did not answer them straightforwardly, and showed he is simply not willing to commit to doing what is right.

I don't know how anyone can vote for him. I don't know what he has said in private conversations—what he says he thinks he would do at the Department of Transportation. All I can ask is for my colleagues to please look at the evidence, and the evidence is overwhelming. This is a man who cannot be trusted with the values of this country. He cannot be trusted to do what is right on behalf of the American people. He is not someone who will speak truth to power. If anything, this is a time in this country that we need more people who will speak truth to power, not someone who will kowtow to power, and that is exactly the kind of person Mr. Bradbury is. He is an unprincipled lawyer who will be paired with an unprincipled executive, and that is a dangerous combination regardless of what agency he serves.

Again, I ask my colleagues to please vote no on Mr. Bradbury. I cannot oppose his nomination strongly enough. If you have any questions, please come talk to those of us who have worn the uniform of this great Nation, who know what it is like to be in jeopardy of being captured by the enemy, who know what it is like to hope and pray that the nations around the world—which view America's conduct as the bellwether for how we treat others—know that they themselves will be treated in the same manner that we treat our prisoners.

Those troops in harm's way right now know that because of Mr. Bradbury, they are less safe and they are less able to do their jobs. When our troops go into harm's way, they should focus only on getting the job done, not on what might happen should they get captured. Thanks to Mr. Bradbury, that is a real threat for them now.

Again, I ask my colleagues to please say no.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HOEVEN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I want to begin by thanking the Senator from Illinois. Not only did she serve this country, she sacrificed for this country. I for one, as I see her rolling up and down the aisles and through the halls, am just so proud and so thankful for her, for her family, for her work, and particularly I thank her for these comments. I think the Senator is very worthy, and I am delighted to be her colleague.

Mr. President, I, too, rise in strong opposition to the confirmation of Steven Bradbury to serve as general counsel in the Department of Transportation.

Steven Bradbury has a troubling history of disregard for United States and international law and seems unable to offer objective legal analysis. Both of these troubling characteristics were on display when he helped justify the CIA's torture program.

I was on the Intelligence Committee during this period of time—and still am—and one of the things we wanted to see were the Office of Legal Counsel memoranda. The OLC memos were never given to us, although individuals from the Department came and spoke to us about them.

Steven Bradbury was head of the Justice Department's Office of Legal Counsel from 2005 to 2009. During that time, he wrote four legal memos—finally declassified, finally here—and this is what they look like. Those memos provided the legal foundation for waterboarding and other interrogation techniques that were tantamount to torture.

The first memo, written on May 10, 2005, concludes that the use of so-called enhanced interrogation techniques was lawful. This memo, which addressed torture techniques including waterboarding, was written to replace the previous classified Office of Legal Counsel opinions.

The second memo, also written on May 10, found that the use of multiple interrogation techniques would not violate U.S. law because there would be no severe mental pain or suffering, just physical distress.

The third memo, written on May 30, 2005, reaffirmed a previous OLC opinion that the CIA's use of torture, such as waterboarding, was not prohibited by the Convention against Torture, so long as it was done overseas. That memo also concluded that constitutional prohibitions against cruel, unusual, and inhumane treatment or punishment did not apply.

The fourth memo, written on July 20, 2007, concluded that the continued use of six enhanced interrogation techniques by the CIA, including forced nudity and extended sleep deprivation, did not violate the Detainee Treatment Act or the War Crimes Act or the Geneva Conventions.

By writing these four memos, Bradbury not only provided the feeble foundation upon which the CIA violated well-established law and military doctrine, he also endangered U.S. troops—as the Senator from Illinois has pointed out—betrayed our country's values, and compromised our standing as a world leader.

The tactics used by the CIA were not only more brutal than was known, they also didn't produce actionable intelligence. We have a 7,000-page document, with 32,000 footnotes, which took 6 years of reviewing cables and information—all factual, not declassified, and a summary was declassified—and to date, nothing in it has been contradicted. Capturing terror suspects and torturing them in secret facilities failed. Period.

Among Bradbury's many troubling conclusions in these memos were that neither the Constitution's prohibitions against inhumane treatment nor the U.N. Convention Against Torture applied to the CIA's activities outside U.S. territory. That is interesting.

Even more troubling, Bradbury's 2007 memo was written with the purpose of evading congressional intent. It is stunning that the head of the Office of Legal Counsel would knowingly work to find loopholes in the law to justify the use of torture.

On October 5, 2005, the Senate voted 90 to 9 to approve the Detainee Treatment Act of 2005. This law stated: ''No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment.''

However, less than 2 years later, Bradbury's fourth torture memo explicitly allowed the CIA to continue many of the abusive interrogation techniques that Congress clearly intended to prohibit in the Detainee Treatment Act of 2005. These include forced nudity and extended sleep deprivation. This should be a disqualifier for

continued service in the U.S. Government, regardless of the position, I believe.

It is true that Congress settled this matter in June of 2015 when, thanks to Senator MCCAIN, we voted overwhelmingly to prohibit torture in that year's National Defense Authorization Act, but that doesn't change the fact that Bradbury did his best to bypass Congress a decade earlier by writing those torture memos.

It is also true that as general counsel of the Transportation Department, Bradbury wouldn't be tasked with duties connected to detainees. But by ignoring the intent of Congress in order to justify the CIA's continued use of torture, Bradbury ignored the law to achieve a desired result and that is unacceptable.

Even the Justice Department found fault with Bradbury's actions. After the OLC torture memos came to light, the Department of Justice conducted an investigation of the facts and the circumstances surrounding those memos and DOJ's role in the implementation of the CIA interrogation program.

On June 29, 2009, the Justice Department found ''serious concerns'' about the objectivity and reasonableness of Bradbury's work. This included evidence that he gave into pressure in order to produce opinions that would allow the CIA torture program to continue.

The Department of Justice report cited several Bush administration officials who believed Bradbury was producing opinions with the goal of allowing the program to continue.

Jim Comey, who served as Deputy Attorney General at the time of Bradbury's memos, said there was significant pressure from the White House—specifically Vice President Cheney and his staff—to allow the program to continue. Comey said that one would have to be ''an idiot not to know what was wanted.'' Comey also said that in his opinion, Bradbury knew that ''if he rendered an opinion that shut down or hobbled the [interrogation] program the Vice President . . . would be furious.''

John Bellinger, who in 2007 served as legal advisor to Secretary of State Condoleezza Rice, wrote to Bradbury and stated that he was ''concerned that the [2007 Bradbury] opinion's careful parsing of statutory and treaty terms'' would be considered ''a work of advocacy to achieve a desired outcome.''

The DOJ was also concerned that Bradbury relied too heavily on the CIA's reviews of its own interrogation program, which of course were positive.

During a time when we needed independent voices in government to check the CIA's actions, Bradbury failed to rise to the occasion. He failed to fulfill the responsibilities of his position.

The Senate twice refused to confirm Bradbury as Assistant Attorney General for the Office of Legal Counsel during the Bush administration because of this very issue. Nothing has changed since that time. I urge my colleagues to oppose his nomination.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. STRANGE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, I rise today to speak in opposition to the nomination of Steven Bradbury to be the general counsel of the Department of Transportation. I must say to my colleagues, of the years that I have been here, I never thought that we would be considering the nomination of a person who supported the commission of what the Geneva Convention says are war crimes. That is a serious, serious issue. And the Constitution charges the Senate to give its advice and consent to senior executive branch nominations as a check against the appointment of people to an important government position who, because of one failure or another, should not be entrusted with the interests of the American people. I do not believe that Mr. Bradbury deserves that public trust, and I will oppose his nomination. I am astonished that we are here, considering the nomination of a person who is in violation of the Geneva Convention, the rules of war to which the United States of America is signatory.

Some of us remember that Mr. Bradbury served as the acting head of the Department of Justice's Office of Legal Counsel from 2005 to 2009. During this time, he authored a few of what have become to be known infamously as the torture memos, which provided the legal justifications for 13 types of enhanced interrogation techniques employed by the CIA against detainees held by the United States under law of war authorities.

My dear friends and colleagues, the term ''enhanced interrogation techniques'' is a euphemism. These memos provided a legal framework for the use of methods that include waterboarding, which is a mock execution and an exquisite form of torture in which the victim suffers the terrible sensation of drowning. In discussing this practice, we are speaking of an interrogation technique that dates from the Spanish Inquisition and has been a prosecutable offense for over a century. It is among the crimes for which Japanese war criminals were tried and hanged following World War II and was employed by the infamous Khmer Rouge in Cambodia. I repeat. The Japanese war criminals were tried and hanged following World War II for—guess what—waterboarding. Of course, the Khmer Rouge, whom we all know about, was also one of those.

I must say to my colleagues that in the years I have been here in the U.S. Senate, I never believed that I would be voting against an individual who justified the practice of torture. All you have to do is read the Geneva Conventions, to which the United States of America is signatory, and you will see that Mr. Bradbury's memos, which basically justified torture, were in direct contravention.

The memos of which Mr. Bradbury was the author provided the justifications for the inhumane interrogation of detainees by using methods such as forced nudity and humiliation, facial and abdominal slapping, dietary manipulation, stress positions, cramped confinement, striking, and more than 48 hours of sleep deprivation. I would challenge Mr. Bradbury to go through 48 hours of sleep deprivation before he signs off on another memo. Worse, the legal justifications for these techniques were interpreted to permit their use simultaneously, over long periods of time, which constituted what I and many others who are familiar with these techniques believe are torture—torture inflicted by the representatives of a Nation founded on the ideal that all people are born with equal dignity and that even enemies who scorn our ideals, once they are our prisoners, are to be spared cruel, inhuman, and degrading treatment.

The memos authored, in part, by Mr. Bradbury justified the use of these techniques under article 16 of the United Nations Convention against Torture and declared them not in contravention to article 3 of the Geneva Conventions, which prohibits ''outrages upon personal dignity''—those are the Geneva Conventions to which the United States is signatory—and violence to a life of a person. Most people, including, I am sure, Mr. Bradbury, have never been tightly bound, made to remain in a stress position, and deprived of sleep for 48 hours. Let me assure my colleagues that anyone who has suffered such treatment will know that he has been tortured.

The two main memos that Mr. Bradbury wrote and signed were entitled ''Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees'' and ''Application of the War Crimes Act, the Detainee Treatment Act, and Article 3 of the Geneva Conventions to Certain Techniques that May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees.''

In the Senate Select Committee on Intelligence's study of detention and interrogation program, CIA leadership and interrogators frequently cited these two Bradbury memos as the legal justification that permitted them to use enhanced interrogation techniques. These techniques amounted to de facto torture. Put simply, Mr. Bradbury's memos were permission slips for torture. I repeat to my colleagues who are about to vote for him that his memos were permission slips for torture.

I wonder, of someone who is responsible for what he justifies, how he sleeps. I wonder how he gets rest. Doesn't the face of that person who has been deprived of sleep for 48 hours ever pop into his mind?

I have long said that I understand the reasons that governed the decision to approve these interrogation methods, and I know that those who approved them and those who employed them in the interrogation of captured terrorists were dedicated to protecting the American people from harm. I know that they were determined to keep faith with the victims of terrorism and prove to our enemies that the United States would pursue justice relentlessly and successfully no matter how long it took. I know that their responsibilities were grave and urgent and that the strain of their duty was considerable. I admire their dedication and love of country, but I argued then and I argue now that it was wrong to use these methods, that it undermined our security interests, and that it contradicted the ideals that define us and which we have sacrificed so much to defend.

While Mr. Bradbury has justified his work on these torture memos as the duty of a lawyer representing his client, the Commander in Chief of the United States, I believe that he had a higher duty, as do all who serve this country, to defend our most cherished ideals from wholesale violation in the name of self-defense. Leave aside the fact that, as intelligence-gathering tools, torture is mostly useless and has been proven to be so by the record assembled by the Intelligence Committee. We have led by example and sacrificed blood and treasure to advance our ideals around the world only to undermine our good reputation in a crucible in which we allowed fears to get the better of our decency.

While it is true, as Mr. Bradbury and his supporters claim, that the memos issued under his name improved upon the sloppy and more expansive legal work done by his predecessors, I do not think that that absolves Mr. Bradbury of his role in this dark chapter of American history. Indeed, a more meticulous justification for torture is still a justification for torture—and, arguably, a more pernicious one.

Let's not pretend that there was no direct connection between the legal work done by Mr. Bradbury and the abuses that followed. The memos that bear his name made it possible for Khalid Sheikh Mohammed—a monster and a murderer, to be sure, but a detainee held in U.S. custody under the laws of armed conflict—to be waterboarded 183 times. I repeat. Khalid Sheikh Mohammed was waterboarded 183 times. This technique was used so gratuitously that even those applying it eventually came to believe that there was no reason to continue. They were ordered to do so anyway.

The memos also made it possible for Abu Zubaydah, an alleged al-Qaida operative, to be subjected to waterboarding two to four times a day, rendering him so distressed that he was unable to speak. The damaging effects of waterboarding cannot be overstated. According to the Senate Intelligence Committee's report on torture, Zubaydah's waterboarding sessions ''resulted in immediate fluid intake and involuntary leg, chest and arm spasms'' and hysterical pleas. In at least one session, ''Zubaydah became completely unresponsive, with bubbles rising through his open, full mouth,'' and he required medical intervention.

The memos that bear Mr. Bradbury's name also made it possible for a Libyan detainee and his wife to be rendered to a foreign country where the woman was bound and gagged, while being several months pregnant, and photographed naked as several American intelligence officers watched.

I wonder what our average citizens would think when we tell them that an agent of the American Government took a woman who was several months pregnant and bound, gagged, and photographed her naked as several American intelligence officers watched. I am told that that picture still exists somewhere in the archives that has recorded this shameful period in our history.

In voting against Mr. Bradbury's nomination, as I also voted last week for similar reasons against Mr. Steven Engel's nomination to head the Department of Justice's Office of Legal Counsel, I am making it clear that I will not support any nominee who justified the use of torture by Americans. The laws of war were carefully created to be precise and technical in nature but also to leave room for interpretation, even at the risk of abuse by the executive branch. This makes the duty of government lawyers all the more significant. They must serve as guardians of our ideals and our obligations under international law. They are the safeguards and checks on the conscience of our government, and I cannot in good faith vote to confirm lawyers who have fallen short in this awesome responsibility.

I will cast my vote against Mr. Bradbury, not because I believe him to be unpatriotic or malevolent but because I believe that what is at stake in this confirmation vote, much as what we stand to gain or lose in the war we are still fighting transcends the immediate matter before us. Ultimately, this is not about Mr. Bradbury; this is not about terrorists. This is about us—who we are and who we will be in the future.

This is about what we lose when, by official policy or official neglect, we allow, confuse, or encourage those who fight this war for us to forget that best sense of ourselves. This is our greatest strength: When we fight to defend our security, we also fight for an idea—not a tribe, not a land, not a King, not a twisted interpretation of an ancient religion but for an idea that all men are created equal and endowed with unalienable rights.

It is indispensable to our success in this war that those we ask to fight it know that in the discharge of their responsibilities to our country, they are expected never to forget that they are Americans and the defenders of a sacred idea of how nations should be governed and conduct their relations with others, even our enemies.

Those of us who have given them this enormous duty are obliged by our history and the many terrible sacrifices that have been made in our defense to make clear to them that they need not risk our country's honor to prevail and that they are always, always, always Americans—and different, stronger, and better than those who would destroy us.

Mr. Bradbury's work many years ago did a disservice to our Nation and its defenders. I cannot in good conscience give him my trust to serve us again.

I am confident, because of the way this system works, that Mr. Bradbury will be confirmed, probably. This is a dark, dark chapter in the history of the United States Senate. We are legitimizing offenses against the code of the Geneva Conventions. We are harming the commitment that our forefathers made that we are all created equal. Unfortunately, we have now betrayed that sacred trust.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. TILLIS. Mr. President, I ask unanimous consent that all postcloture time be yielded back.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is, Will the Senate advise and consent to the Bradbury nomination?

Mr. TILLIS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. BOOKER), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from Maryland (Mr. VAN HOLLEN) are necessarily absent.

The PRESIDING OFFICER (Mr. JOHNSON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 47, as follows:

[Rollcall Vote No. 272 Ex.]

YEAS—50

Alexander	Fischer	Perdue
Barrasso	Flake	Portman
Blunt	Gardner	Risch
Boozman	Graham	Roberts
Burr	Grassley	Rounds
Capito	Hatch	Rubio
Cassidy	Heller	Sasse
Cochran	Hoeven	Scott
Collins	Inhofe	Shelby
Corker	Isakson	Strange
Cornyn	Johnson	Sullivan
Cotton	Kennedy	Thune
Crapo	Lankford	Tillis
Cruz	Lee	Toomey
Daines	McConnell	Wicker
Enzi	Moran	Young
Ernst	Murkowski	

NAYS—47

Baldwin	Harris	Nelson
Bennet	Hassan	Paul
Blumenthal	Heinrich	Peters
Brown	Heitkamp	Reed
Cantwell	Hirono	Sanders
Cardin	Kaine	Schatz
Carper	King	Schumer
Casey	Klobuchar	Shaheen
Coons	Leahy	Stabenow
Cortez Masto	Manchin	Tester
Donnelly	Markey	Udall
Duckworth	McCain	Warner
Durbin	McCaskill	Warren
Feinstein	Merkley	Whitehouse
Franken	Murphy	Wyden
Gillibrand	Murray	

NOT VOTING—3

Booker	Menendez	Van Hollen

The nomination was confirmed.

The PRESIDING OFFICER. The majority leader.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that with respect to the Bradbury nomination, the motion to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior 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 nomination of David G. Zatezalo, of West Virginia, to be Assistant Secretary of Labor for Mine Safety and Health.

Mitch McConnell, John Hoeven, Thom Tillis, Tom Cotton, Cory Gardner, Jerry Moran, John Barrasso, Luther Strange, Mike Crapo, John Cornyn, Richard Burr, Mike Rounds, Orrin G. Hatch, David Perdue, Marco Rubio, John Thune, John Boozman.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of David G. Zatezalo, of West Virginia, to be Assistant Secretary of Labor for Mine Safety and Health, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. BOOKER), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from Maryland (Mr. VAN HOLLEN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 45, as follows:

[Rollcall Vote No. 273 Ex.]

YEAS—52

Alexander	Flake	Perdue
Barrasso	Gardner	Portman
Blunt	Graham	Risch
Boozman	Grassley	Roberts
Burr	Hatch	Rounds
Capito	Heller	Rubio
Cassidy	Hoeven	Sasse
Cochran	Inhofe	Scott
Collins	Isakson	Shelby
Corker	Johnson	Strange
Cornyn	Kennedy	Sullivan
Cotton	Lankford	Thune
Crapo	Lee	Tillis
Cruz	McCain	Toomey
Daines	McConnell	Wicker
Enzi	Moran	Young
Ernst	Murkowski	
Fischer	Paul	

NAYS—45

Baldwin	Gillibrand	Murray
Bennet	Harris	Nelson
Blumenthal	Hassan	Peters
Brown	Heinrich	Reed
Cantwell	Heitkamp	Sanders
Cardin	Hirono	Schatz
Carper	Kaine	Schumer
Casey	King	Shaheen
Coons	Klobuchar	Stabenow
Cortez Masto	Leahy	Tester
Donnelly	Manchin	Udall
Duckworth	Markey	Warner
Durbin	McCaskill	Warren
Feinstein	Merkley	Whitehouse
Franken	Murphy	Wyden

NOT VOTING—3

Booker	Menendez	Van Hollen

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 45.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of David G. Zatezalo, of West Virginia, to be Assistant Secretary of Labor for Mine Safety and Health.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Thank you, Mr. President.

Mr. President, the Senate has just invoked cloture on the nomination of David Zatezalo, of West Virginia, to be the Assistant Secretary for Mine Safety and Health. Mr. Zatezalo is uniquely qualified to lead the U.S. Department of Labor's Mine Safety and Health Administration because he knows the industry inside out. He has spent his career in mining, starting as a miner. He is a member of a union. He worked his way up to general superintendent in Southern Ohio Coal and was a general manager at AEP.

The Health, Education, Labor, and Pensions Committee approved his nomination on October 18, and I am glad the Senate will have the opportunity to vote on his confirmation.

TAX REFORM

Mr. President, for a few minutes I would like to turn to another subject. Congress has turned its attention to tax reform, and our principal challenge is to find tax breaks and loopholes to eliminate so that we can lower rates for taxpayers.

I have a nomination. The top of the list should be ending the wind production tax credit. Congress has already recognized the need to end the wind production tax credit by passing legislation to phase out the credit by 2020.

The draft House tax proposal reduces the amount available for new wind turbines by returning the credit to its original value instead of adjusting it for inflation, but we should do better. Instead of phasing it out, we should end the wind production tax credit this year. Ending the wind production tax credit on December 31, 2017, would save over $4 billion, which we could then use to lower tax rates for the American people.

The wind production tax credit has been in place for 25 years. It has been extended 10 different times by Congress. It was originally set to expire in 1999.

Tax credits are best used to jumpstart new and emerging technologies. It has been a quarter of a century. Wind turbines are no longer a new technology.

President Obama's Energy Secretary, Steven Chu, testified that he believes that wind is a mature technology. It is time to end this wasteful and expensive subsidy for a clearly mature technology.

To date, the wind production tax credit has already cost the taxpayers billions. For 8 years—from 2008 to 2015—the wind production tax credit cost taxpayers $9.6 billion. That is more than $1 billion per year.

According to the Congressional Research Service, the wind production tax credit is expected to cost taxpayers over $23 billion between 2016 and 2020, and the cost to taxpayers will continue until 2030. That is because when you extend the wind production tax credit for 1 year, it is really for 10 years.

To benefit from the tax credit, wind developers must just begin construction of a wind project before December 31, 2019. Then those developers can reap the tax benefits for a decade.

Despite the billions Congress has provided in subsidies, wind energy still produces only 6 percent of our country's electricity and 17 percent of our country's carbon-free electricity. By contrast, nuclear is 20 percent of our electricity and 60 percent of our emissions-free, carbon-free electricity.

The wind blows only about one-third of the time. Until there is some way to store large amounts of wind, a utility still needs to operate nuclear, gas, and coal plants when the wind doesn't blow.