the FBI on the same day he had been reported by the Senate Judiciary Committee, I spoke about how the rights of all Americans were at stake in the selection of a new FBI Director and how the FBI has extraordinary power to affect the lives of ordinary Americans.

Contrast that with President Bush, Democrats were in the majority, and we Democrats worked to get President Bush's nominee confirmed the same day he came out of committee.

We Democrats made sure politics were not in play in the confirmation of the FBI Director. Republicans shouldn't allow politics to play in the confirmation of an FBI Director. I said at the time, with Robert Mueller, I noted the FBI's sweeping investigatory powers, when used properly, can protect all of us by combating crime, espionage, and terrorism. But I also warned that unchecked, these same powers could undermine our civil liberties and our right to privacy.

When I spoke those words, I didn't know that just 40 days later the world—and the FBI -would change dramatically in the wake of the terrorist attacks on September 11. It shook this area, including even the Senate because of the anthrax attack, which killed a number of individuals. One of the anthrax letters was addressed to me. As the full Senate considers the President's nomination of James Comey to be the seventh Director of the FBI, what I said in 2001 holds true today. With the increased counterterrorism role of the FBI and the expansion of the FBI's surveillance activities, it is even more imperative that the next FBI Director possesses an unflagging commitment to the Constitution and the rule of law.

James Comey is the right man to lead the FBI. He has had a long and outstanding career in law enforcement. He worked for years as a front-line prosecutor on a range of cases fighting violent crime, terrorism, and white-collar fraud, all of which are at the core of the FBI's mission. He also served as the U.S. attorney for the Southern District of New York. He served as the Deputy Attorney General under President George W. Bush.

In fact, Madam President, many of us remember, when he was Deputy Attorney General, the dramatic hospital bedside confrontation James Comey had with senior White House officials who tried to prod an ailing John Ashcroft to reauthorize an NSA surveillance program—a program that the Justice Department had concluded was illegal. Yet White House staff was over there trying, at his hospital bed, to get the Attorney General to agree to it. But the Deputy Attorney General stepped in, in his role as Acting Attorney General, and stood firm against this attempt to circumvent the rule of law, and I believe he will continue to show the same strength of character and principled leadership if confirmed as Director.

During his confirmation hearing before the Judiciary Committee, James Comey proved that his reputation for unwavering integrity and professionalism is well-deserved. One area of great concern for me was his approval of a 2005 legal memo to authorize the use of various methods of torture, including waterboarding. I wanted to make sure that as FBI Director, James Comey would never condone or resort to waterboarding a prisoner—something for which we have prosecuted people in other countries. He answered my questions and stated directly, unequivocally, that waterboarding is not only personally abhorrent but that it is torture and illegal. He also testified that if confirmed he would continue the FBI's policy of not permitting the use of abusive interrogation techniques against prisoners, including sleep deprivation and cramped confinement.

Mr. Comey and I do not agree on all matters. I do not agree with him that the Authorization for the Use of Military Force permits the government to detain indefinitely an American citizen captured on American soil in military custody without charge or trial, and I will continue to oppose efforts to codify such an interpretation of the law. I was glad James Comey committed to adhering to the current administration policy of not indefinitely detaining Americans in such circumstances.

When he testified before us, I saw a man of integrity and honesty, competent in background, and so once he is confirmed—and I trust he will be confirmed once this filibuster has ended—I will continue to press him on the scope and legality of surveillance conducted by the government pursuant to the PATRIOT Act and other authorities under the Foreign Surveillance Intelligence Act. As I noted during his confirmation hearing, just because the FBI has the ability to collect huge amounts of data does not mean it should be collecting huge amounts of data. As the head of our premier law enforcement agency, the FBI Director bears a special responsibility to ensure that domestic government surveillance does not unduly infringe upon our freedoms. I have long said that protecting our national security and protecting Americans' fundamental rights are not mutually exclusive. We can and must do both. I fully expect that James Comey will work to achieve both goals.

After Director Mueller's distinguished tenure at the Bureau, James Comey has big shoes to fill. The next Director must face the growing challenge of how to sustain the FBI's increased focus on counterterrorism while at the same time upholding the FBI's commitment to its historic law enforcement functions. It is going to be particularly difficult to protect this country and protect our law enforcement functions because of sequestration and other fiscal constraints, but I think the FBI has to continue to play a key role in combating the crimes that affect everyday Americans—from violent crimes, to bank robberies, to fraud and corruption cases.

If we learned nothing else since the September 11 attacks, we learned that it matters who leads our Nation at all levels of government. We need strong, principled, ethical leaders who steadfastly adhere to the law. I am confident that James Comey is such a leader. I am urging Senators on both sides of the aisle to join me in voting to overcome this filibuster in a vote to confirm him to be the next Director of the Federal Bureau of Investigation.

As I said before—and I will put into the RECORD how long it has taken from nomination to confirmation—twice as long as President Bush's FBI nomination, more than twice as long as President Reagan's FBI nomination, and twice as long as President Nixon's FBI nomination. In every one of those cases, no Democrat filibustered President Bush, President Reagan, and President Nixon. We all worked to get the FBI Director in there. This filibuster by my friends on the other side of the aisle is unprecedented. I wish they would treat President Obama the same way we treated President Bush, President Reagan, and President Nixon and not make President Obama seem to be somehow different and interfere with law enforcement the way they have.

Madam President, I ask unanimous consent to have printed in the RECORD a chart showing how long it took previous Presidents.

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

FBI Director Nominee	Total # days from nomination to confirmation
JAMES B. COMEY, JR. (OBAMA)	38 days—as of 7/29/13.
ROBERT S. MUELLER, III (W. BUSH)	15 days.
LOUIS FREEH (CLINTON)	17 days.
WILLIAM SESSIONS (REAGAN)	16 days.
WILLIAM WEBSTER (CARTER)	20 days.
CLARENCE KELLEY (NIXON)	19 days.

THE BUDGET

Mr. LEAHY. Madam President, I see my friend from Iowa on the floor, but I want to express for the record my concern about this kind of unprecedented obstruction. And it is unprecedented. I have been here 38 years, and this has never happened before, this unprecedented obstruction of the FBI nominee.

In addition to the unprecedented obstruction on the FBI nominee, I want to mention another topic that my friends on the other side of the aisle are blocking. A small minority of Senators are objecting to moving forward with a budget conference. We have all heard a lot of talk in the last few years about getting our fiscal house in order—it makes for a great campaign slogan. But I am afraid that too many in this body are not following through on their responsibility to govern.

It has been over four months since the Senate passed its version of a budget resolution. We all remember being here overnight voting on amendment after amendment. In the intervening months Senate Democrats have tried 17 times to move to a bipartisan budget conference with the House to work out

a final budget agreement. Yet each time the perfunctory request is made—a request that normally is agreed to shortly after we finish our version of the budget—someone from the other side of the aisle, with the full support of their leadership, objects.

After years of crocodile tears from the other side of aisle about the lack of a budget from the Senate, we finally pass one and they object to moving forward.

After years of hearing how we need to get our fiscal house in order because the national debt is the single most pressing issue facing the country, we pass a responsible budget plan to pay down the debt and they object to moving forward.

When it comes time to turn all the politicking into governing, they get cold feet and object.

As the distinguished chairwoman of the Budget Committee has lamented over and over again, I am sorry to say that for some factions in the Republican Party today ''compromise'' is a dirty word and ''distrust'' is a political tactic. That may explain why Senate Republicans have offered up excuse after excuse for blocking the regular budget order they so desperately pled for just a short time ago. Republicans are denying the opportunity for members of this body to work with members of the other body on hammering out a final budget agreement.

I have been fortunate to serve in this chamber for 38 years. I was elected to the Senate in 1974, the same year the Congressional Budget Act passed into law. And I served here with Senator Edmund Muskie of Maine, the first chairman of the Budget Committee. In all those years—with all those budgets—I cannot recall one, single instance where political obstruction like this blocked the Senate from going to conference on a budget resolution. And just to be sure, I checked with the Congressional Research Service and they could not find another instance of obstruction like this on a budget conference either. Not from Democrats; not from the old GOP; not from anyone until now.

Some in this body have objected to the Senate considering any appropriations bills until a final budget agreement is reached. Let me see if I get this straight. The very same people who have been begging for a new budget plan are blocking the Senate from going to conference on the budget resolution and then saying we cannot possibly deal with any bills to fund the government next year until we have a final budget agreement, inching us even closer to a government shutdown or a government default that would devastate our economy and ruin the very fiscal house they claim they are trying to get in order. Oh, the sweet irony here.

It is time for reason and sanity to return to the Senate—on this budget resolution, on nominations, and on a whole host of other issues. I think returning to regular order on the budget conference—and letting conference members from the House and the Senate work out a final agreement—would be a good first step to bringing some comity and order back to this body so we can serve the American people.

Mr. WHITEHOUSE. Madam President, I rise today to speak regarding the nomination of James B. Comey, Jr., to serve as Director of the Federal Bureau of Investigation.

Mr. Comey has a long record of service to the Department of Justice. Colleagues doubtless are familiar with Mr. Comey's role in the infamous scene at the side of Attorney General Ashcroft's hospital bed over the reauthorization of part of President Bush's warrantless wiretapping program. Mr. Comey, to his great credit, stood firm for the rule of law and for the Department he served.

Nonetheless, I believe Mr. Comey's role in the issuance of Justice Department legal opinions on torture deserves close examination by this body.

In August 2002, Assistant Attorney General Jay Bybee and John Yoo of the Justice Department's Office of Legal Counsel used what are now acknowledged to be radical—some would say outlandish—legal arguments to authorize the use of torture. Jack Goldsmith, the subsequent head of the office, withdrew those opinions. His successor, Daniel Levin, issued a new opinion, dated December 30, 2004, that provided a new analysis of the Federal statute outlawing torture. The Office of Legal Counsel, under the leadership of Steven Bradbury, applied that analysis to a series of abusive interrogation techniques, as used individually and in combination. The resulting two opinions—the Individual Techniques Opinion and the Combined Techniques Opinion—were issued on May 10, 2005. Then-Deputy Attorney General Comey concurred in the former and vigorously objected to the latter on both legal and policy grounds.

I strongly disagree with Mr. Comey's conclusion that the Individual Techniques Opinion was, as he put it at his confirmation hearing before the Judiciary Committee, a ''serious and responsible interpretation'' of the torture statute. Its legal analysis is inadequate in numerous ways, but for today I will focus on one of the most significant shortcomings.

As I have observed on other occasions, this opinion omits the 1984 Fifth Circuit case of United States v. Lee, which involved the prosecution by the Reagan Justice Department of a local sheriff and deputies who had engaged in waterboarding. The Justice Department's brief on appeal described the technique in detail and described it as ''water torture.'' The opinion by the Fifth Circuit likewise repeatedly referred to ''water torture'' and ''torture.'' As Professor David Luban of Georgetown Law School explained at a hearing I chaired in May 2009, Lee is ''perhaps the single most relevant case in American law on the legality of waterboarding.''

To give you an idea of how widely the Individual Techniques Opinion ranged, it evaluated the meaning of the terms ''severe physical or mental pain or suffering;'' it evaluated ''[t]he common understanding of the term 'torture' and the context in which the statute was enacted'' and it discussed ''the historical understanding of torture.'' Yet nowhere in this discussion of the ''historical understanding of torture'' and the ''common understanding of the term 'torture''' does this opinion mention that it was the view of the Department of Justice itself, confirmed by the U.S. Court of Appeals for the Fifth Circuit in 1984, that waterboarding is torture. The opinion likewise fails to consider the American prosecutions of Japanese soldiers for waterboarding our troops during the Second World War or the court-martials of American soldiers for using the technique in the Philippines after the Spanish-American war.

The shortcomings of the Individual Techniques Opinion go beyond the failings of its legal analysis. Lawyers cannot analyze the law without knowing the facts, and the record demonstrates that the CIA repeatedly gave the Office of Legal Counsel bad information about the use and effectiveness of the techniques. How willingly Yoo and Bybee accepted false representations by the CIA about their use of the techniques is a question for another day—and their consciences.

In 2004, however, the CIA's Inspector General explained that the CIA had used the techniques differently than they were described in the Yoo and Bybee opinions. Significant misrepresentations also made their way into Office of Legal Counsel opinions in 2005. As former FBI interrogator Ali Soufan testified at a hearing I held in 2009, a May 30, 2005, opinion claim about the effectiveness of waterboarding against Khalid Sheik Muhammad and the so-called Dirty Bomber, Jose Padilla, was demonstrably false. And although I cannot discuss the report of the Senate Intelligence Committee, which remains classified, it is my firm belief that when all the facts are finally made public, the judgment about the candor of the CIA will be harsh and the Individual Techniques Opinion will be further discredited.

As I pointed out at Mr. Comey's confirmation hearing, it is not enough to say that letting the Individual Techniques Opinion go was ok because the techniques would likely only be used in combination. If Mr. Comey's view had prevailed and the Combined Techniques Opinion had not been issued, an interrogator could have waterboarded a detainee as long as that technique was used in isolation.

It also concerns me that Mr. Comey did not press for an analysis of legal prohibitions other than the torture statute. The Individual Techniques Opinion and the Combined Techniques Opinion did not consider, for example,

the legality of abusive techniques under American treaty obligations, such as those imposed by the Convention Against Torture or even under the Constitution. It may be the practice of the Office of Legal Counsel to divide relevant legal questions among multiple opinions, but that does not justify failing to address all obvious and relevant legal questions. As a result, I believe that concurrence in the Individual Techniques Opinion should have been withheld until it was clear that the Office was evaluating all relevant treaty and constitutional questions.

Because I do not believe the Individual Techniques Opinion is reasonable or responsible, and because I believe the process for reviewing that opinion was flawed, I cannot hold Mr. Comey blameless for concurring it. He should have done better.

This evaluation has the benefit of hindsight and is free from the pressurized atmosphere of early 2005, when Mr. Comey was forced to contend with a White House pulling the Justice Department in the wrong direction on a number of fronts.

I accept that it was not Mr. Comey's responsibility as the Deputy Attorney General to do his own research on the questions addressed by the Individual Techniques Opinion. I do think that the opinion had a bad enough odor to put a responsible, well-trained lawyer on alert.

Mr. Comey did take significant, affirmative steps to satisfy himself that the Individual Techniques Opinion was issued in good faith, seeing to it that the opinion was pressure-tested by exposing it to broad review within the Department of Justice and the executive branch. This fact distinguishes the Individual Techniques Opinion from the earlier opinions that had been crafted without adequate scrutiny within the executive branch—scrutiny they likely could not have survived: remember the use of the Medicare standard for a torture opinion.

In sum, while I believe that the Individual Techniques Opinion does not meet the standards expected of Justice Department attorneys, I ultimately have concluded that Mr. Comey performed his role reasonably.

One key fact corroborates this conclusion. As discussed above, the legality of waterboarding under American treaty obligations and the Constitution was the obvious followup question. In fact, the Office of Legal Counsel was working on a separate opinion on those very questions and would publish it on May 30, 2005. Mr. Comey, however, was deliberately cut out. Though he already had submitted his resignation, Mr. Comey apparently was enough of a thorn in the side of the enablers of torture that they wanted to get around him.

It is my judgment, overall, that Mr. Comey was an opponent of torture and a defender of the best traditions of the Justice Department and our Nation. I think he could have done better, but Mr. Comey was on the right side. Add to this his clear statements to the committee, his long track record of public service, and his principled stands on other matters of national importance, and I conclude that Mr. Comey has the integrity, the capability, and the commitment to lead the Federal Bureau of Investigation. I will work to see his nomination confirmed and work with him as he undertakes this new chapter in his public service.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, Shortly the Senate will be voting to invoke cloture on the nomination of James B. Comey to become the next Director of the FBI. I will vote to invoke cloture and expect many of my colleagues will do the same.

The confirmation of a new FBI Director is a serious decision for this Chamber to consider. As a large Federal law enforcement agency, the FBI has numerous responsibilities and tremendous power. Only with quality leadership and proper Congressional oversight will the FBI be best equipped to fight crime, terrorism, and espionage.

I think the President has made a fine choice in selecting Mr. Comey as the next leader of the FBI, and I plan to explain my support for him as we approach Mr. Comey's confirmation vote.

I recognize there is a level of concern associated with this nomination regarding the use of drones by the FBI. I have been at the forefront of this issue, raising it last year with the Attorney General. The Attorney General gave me an incomplete answer as to the FBI's use of drones.

Accordingly, after there was disclosure that the FBI was using drones on U.S. soil for surveillance, I questioned Mr. Comey about the extent of that policy. This needs to be addressed by the new director, and I have Mr. Comey's assurance he will review the policy. I will be monitoring this closely, but we need a director in place, and we need to confirm this nomination this week.

Excellent leadership is only one ingredient in the recipe for success at any Federal agency. Another critical element is proper congressional oversight. And it is this component I fear too many of my colleagues have forgotten. Today, too many seem to believe that advice and consent really means rubberstamp and turn a blind eye. The American people deserve better than this approach to confirmations.

Over the last few months, I have observed an alarming pattern. Too often, this administration submits subpar nominees while simultaneously obstructing any legitimate oversight by this Congress. Sadly, many of my colleagues appear to be choosing to ignore any effort to correct it. Let me cite just a few examples.

We saw how Mr. Perez, an assistant attorney general, brokered an unwritten deal that cost the taxpayers hundreds of millions of dollars. My colleagues on the other side largely ignored the shady deal. Mr. Perez tried to cover his tracks, but got caught leaving a voicemail that was recorded. Even then, my colleagues dismissed it. And when he was caught concealing evidence of the deal on his personal email accounts, he defied a lawfully issued congressional subpoena and refused to turn over the documentation. Incredibly, his defiance was ignored. Worse yet, for all this rotten behavior, the Senate rewarded him with a promotion by confirming him as Secretary of Labor.

We see the same thing occurring with the nomination of Mr. Mayorkas. The nominee for the No. 2 position at the Department of Homeland Security is the target of an open investigation by the Inspector General of the Department of Homeland Security. The IG is investigating allegations that the nominee procured a visa as a political favor, even though the visa was properly rejected.

Incredibly, the Senate Committee pressed on with the hearing despite unanimous objection from the minority for moving forward in the midst of an open investigation.

That is incredible to me—a Senate Committee would move forward with a nominee who has an open investigation into the nominee's conduct. I wish this were a unique occurrence, but based on recent experience in the Judiciary Committee, it is not an isolated event. This is exactly what happened recently in the Senate Judiciary Committee with respect to Mr. B. Todd Jones, the nominee to be Director of the Bureau of Alcohol, Tobacco, and Firearms.

Earlier this year, I learned the Office of Special Counsel was investigating Mr. Jones in a complaint that he retaliated against a whistleblower in the U.S. Attorney's Office for the District of Minnesota.

In the Judiciary Committee, it has been the Committee's practice when a nominee is the subject of an open investigation, the Committee generally does not move forward until the issues are resolved. Because of this practice, I objected to holding his hearing last month and requested the hearing be postponed to allow the investigation to finish.

My request was denied. I then objected to putting him on the committee agenda until the non-partisan investigation was complete. Again, my request was rejected. And now, despite the fact there remains an open complaint of whistleblower retaliation against Mr. Jones before the Office of Special Counsel, his nomination will soon be considered by the full Senate.

I want all my colleagues to know what happened because I am quite concerned by the direction it has taken, especially in light of the fact this practice seems to be spreading into other Senate committees as well.

Over the past few months, there has been correspondence between my office and the Office of Special Counsel regarding the status of their proceedings.

I had previously received a copy of an anonymous letter to the Office of Special Counsel making various allegations against Mr. Jones. I sent a letter to OSC on April 8, asking for an update on those allegations. On April 12, the Office of Special Counsel responded that there were two pending matters involving the U.S. Attorney's Office, District of Minnesota, where Mr. Jones is the United States Attorney. The first matter was a prohibited personnel practice complaint alleging reprisal for whistleblowing and other protected activity. The second matter was a whistleblower disclosure, alleging gross mismanagement and abuses of authority.

The complaint, filed by an Assistant United States Attorney in the office, alleged that personnel actions, including a suspension and a lowered performance appraisal, were taken in retaliation for protected whistleblowing or other protected activity.

On June 5, OSC provided the committee with an update to the two pending cases. It reported the whistleblower disclosure case had been closed based on its determination that the information provided was insufficient to determine with a substantial likelihood that gross mismanagement, an abuse of authority, or a violation of a law, rule, or regulation had occurred. Accordingly, OSC closed that case file.

OSC's action to close the whistleblower disclosure case was not based on any investigation by that office. That action was merely a determination based on a technical review of the complaint document itself. It was not a finding on the merits of the complaint.

With regard to the other issue, the prohibited personnel practice, I was informed the complaint was referred for investigation. Subsequently the complainant and Justice Department agreed to mediation. I was told that if mediation was unsuccessful, the case would return to OSC's Investigation and Prosecution Division for further investigation.

My colleagues should understand that, of all the complaints received by OSC, only about 10 percent of them merit an investigation. This case was one of them. Why did the career, nonpartisan staff at OSC forward the case for investigation? Presumably because they thought it needed to be investigated. That says something about the likely merits of the case.

Before the hearing, there was disagreement regarding the status of the Special Counsel's investigation. Accordingly, I contacted the Special Counsel, inquiring as to the status of the complaints. The Special Counsel confirmed for the second time that the investigation remains open. She stated, ''The reassignment of the case for mediation did not result in the matter being closed.''

Despite this, and over my objection, on June 11, the committee went forward with a hearing on the Jones nomination. We were told Mr. Jones' hearing needed to be held in order for him to have an opportunity to respond to the Office of Special Counsel complaints. I would note that a similar rationale was used to justify the Mayorkas hearing—to publicly address the allegations against the nominee. In Mr. Jones' case, in advance of the hearing, the Department of Justice sent a letter to me stating: ''Mr. Jones looks forward to answering your questions about these matters during his nominations hearing. . . .''

Additionally, Mr. Jones was quoted in the Star Tribune as saying, ''I am looking forward to meeting with the Committee and answering all their questions.''

However, as I expected, the hearing provided no information to the committee with regard to the open Special Counsel investigation. At the hearing, Mr. Jones said he could not talk about the complaint. Of course, this negated the whole reason why the hearing had even been scheduled.

At his hearing, my first question to Mr. Jones was about the investigation. This is his reply:

> Because those complaints are confidential as a matter of law, I have not seen the substance of the complaints, nor can I comment on them. I have learned more from your statement today than I knew before I came here this morning about the nature and substance of the complaint.

A few questions later, I inquired of Mr. Jones, ''Will you answer the complaints about the Assistant U.S. Attorney—because that is why you are here today?''

He replied:

> Well, quite frankly, Senator, I am at a disadvantage with the facts. There is a process in place. I have not seen the OSC complaint. I do know that our office, working with the Executive Office of U.S. Attorneys, is in the process of responding to the issues that you have talked about this morning, but I have not had the opportunity to either be interviewed or have any greater knowledge about what the OSC complaint is.''

So there we were, left with an open investigation of serious allegations of whistleblower retaliation. We were told the hearing was the opportunity for us to question the nominee and get these questions answered, but the nominee couldn't even talk about them at all.

This put the Committee in the position of either allowing time for the Office of Special Counsel to do its job or looking into the matter for ourselves before proceeding.

Strangely, late in the day before the hearing, the Majority offered to conduct some interviews the Friday following the hearing. That was quite perplexing to me. We were going to begin the investigation after the hearing had concluded. I could not remember when the committee had ever conducted an investigation after a nominee's hearing.

The day after the hearing, the chairman's staff indicated to the media we were conducting a bipartisan probe. The media reported the majority staff had offered to conduct a bipartisan inquiry into the matters before the Office of Special Counsel.

However, I am disappointed to report there was no genuine effort to gather all the facts. The majority only agreed to jointly interview one witness, the whistleblower himself. However, the majority refused to look into the substance of the whistleblower's claims. Even more troubling, it quickly turned into an inquiry of the whistleblower rather than into the alleged retaliatory action done by the nominee.

The majority reached its own conclusion that it was not a whistleblower matter at all, but a personnel matter wherein management simply imposed discipline on a disruptive or insubordinate employee. However, there was never a factual record before the committee to support this conclusion.

The majority determined the whistleblower is an uncooperative witness for being ''unwilling to provide documents''—meaning his personnel file.

The whistleblower in this instance is an Assistant U.S. Attorney with 30 years of Federal service, 24 years of which he has served in the U.S. Attorney's Office for the District of Minnesota. He has extensive leadership experience and in 2012 received the Assistant Attorney General's Distinguished Achievement Award.

It should be quite alarming to us all that a staff investigation of a whistleblower's complaint would be twisted around into an apparent attempt to investigate the whistleblower.

I have worked with many Federal Government whistleblowers over the years and this is exactly the type of treatment that whistleblowers fear. It is one of the main reasons they are afraid to come forward. This type of treatment raises serious concerns.

Unfortunately, I have come to expect this out of the Federal Government agencies—attacking the whistleblower rather than investigate the underlying problem. I have seen it over and over again. But this sort of inquiry shouldn't be the way the Senate deals with whistleblowers or others who come forward to testify.

The Senate cannot conduct itself this way. We cannot ignore ongoing investigations. In my opinion, we are neglecting our constitutional obligations. Eventually, one of these situations will embarrass the Senate, damage the reputation of the Federal Government, and, ultimately, probably cost the taxpayers, our constituents.

So I urge all of my colleagues to oppose taking further action at this time on the nomination of B. Todd Jones for Director of ATF, another nominee with an open investigation. I will vote no on cloture and encourage my colleagues to do likewise. This is about protecting the advice and consent function of the Senate.

The Senate should wait until the Office of Special Counsel has concluded its investigation and we know the truth about his retaliatory conduct against a protected whistleblower.

There will be time to debate the other substantive concerns regarding this nomination. There may be additional reasons why my colleagues should oppose Mr. Jones's nomination. Other Senators may vote to confirm the nominee.

But as a starting point, we should all be in agreement that it is imprudent and unwise for the Senate to give final consideration to any nominee where there is an open investigation into that nominee's conduct. The Senate cannot abdicate its duty to advise and consent on these nominees and simply rubberstamp them.

As we consider this nomination, as well as a number of other nominations this week, I would urge my colleagues to ponder what a Federal agency needs in order to be best positioned to succeed. In my opinion, a Federal agency needs at least two things: a quality leader and proper congressional oversight. I think this is especially relevant as we consider the next Director of the Federal Bureau of Investigation.

The Federal Bureau of Investigation is a powerful law enforcement agency facing numerous challenges today.

First and foremost, the FBI is still undergoing a transformation from a Federal law enforcement agency to a national security agency. Following 9/11, the FBI's mission changed. Director Mueller was immediately thrust into the role of reinventing a storied law enforcement agency into a national security agency.

While Director Mueller rose to the challenge and made tremendous strides in accomplishing this transformation, that job is not yet complete. It is still adjusting to prevent domestic terrorism. It must grow to combat the growing threat of cybercrimes that threaten our national security, our economy, and our infrastructure. The FBI needs a Director to continue to guide it as it rises to counter these serious threats.

Second, the FBI must confront the growing concerns over the use of invasive methods of gathering information on American citizens. One example would be the proper use of drones by domestic law enforcement agencies. Last year I raised this issue with the Attorney General. It now appears his response was less than forthright. This year, I raised the issue with Director Mueller and again with Mr. Comey, today's nominee.

Frankly, it is going to require a Director who is knowledgeable on the subject, the law, and who is willing to work with Congress in order craft the best policy with regard to this technology's potential use in domestic law enforcement.

Third, a host of legacy problems at the FBI remain unsolved. The FBI has struggled to develop a working case management computer system. Management concerns remain about the proper personnel balance between special agents and analysts. It has yet to effectively manage agent rotations to the Washington, DC headquarters. A real or perceived double standard of discipline between line agents and management must be repaired. Significant concerns about internal FBI policies dealing with whistleblower retaliation exist. Each of these matters must be addressed as they threaten to undermine the hard work of the employees at the FBI.

The position of FBI Director is unique in that it is a 10-year appointment subject to the advice and consent of the Senate. This 10-year term was extended 2 years ago on a one-time only basis. The extension allowed Director Mueller to serve an additional time period as the President failed to nominate a replacement. At the time, we held a special hearing to discuss the importance of a term limit for the FBI Director. One of the reasons Congress created a 10-year term was to ensure accountability of the FBI.

Today, we vote on the nomination of James B. Comey for Director. Mr. Comey has a distinguished legal career. After graduating from the University of Chicago Law School in 1985, Mr. Comey clerked for Hon. John M. Walker, Jr., U.S. district judge for the Southern District of New York.

In 1986, he began his legal career with Gibson, Dunn & Crutcher, LLP, where he focused on civil litigation. In 1987, Mr. Comey became an assistant U.S. attorney in the Southern District of New York, eventually serving as deputy chief of the Criminal Division.

He left the Department of Justice to return to private practice in 1993, joining McGuireWoods, LLP. While at McGuireWoods, he served as a deputy special counsel on the U.S. Senate Special Committee to Investigate Whitewater and Related Matters. During this time, he also served as an adjunct professor at the University of Richmond Law School.

In 1996, Mr. Comey returned to government service as Managing Assistant U.S. Attorney in the Office of the U.S. attorney for the Eastern District of Virginia. By 2002, Mr. Comey was appointed U.S. attorney for the Southern District of New York. And in December 2003, he was appointed Deputy Attorney General, a position he served with honor and distinction until 2005, when he left government service.

However, I would like to point out, and I think Mr. Comey would agree, that perhaps one of the best indicators about his judgment is that he had the smarts to marry an Iowan.

At his confirmation hearing, Mr. Comey addressed many concerns raised by Senators from both sides of the aisle. His answers were direct and thoughtful. On subjects with which he was familiar, he spoke intelligently and straightforward. If he didn't know enough, he said so. There was no trying to hide the ball or cover for his lack of expertise in a particular area. In short, it was a refreshing change from the many nominees who come up here and try to parrot to Senators what nominees think we want to hear.

Not so with Mr. Comey. In fact, several times when pressed on his views on a specific FBI policy, such as FBI whistleblower policies or domestic drone use, he confessed he had little or no knowledge of the current FBI policy but promised to thoroughly review the existing policies in place and the legal and moral issues surrounding the controversies. Furthermore, he pledged to work with Congress by being responsive to our inquiries for information.

Now, these promises are not unique to Mr. Comey. Almost every nominee promises the Senate that he or she will be responsive to our concerns and requests for information. Sadly, especially under this administration, once confirmed, we rarely get an adequate response until right before that individual has an oversight hearing before a Senate or House Committee. I can only hope that Mr. Comey's efforts to be more transparent will not be stymied by the Department of Justice.

As I said, I think that if any Federal agency, but especially the FBI, is to succeed, it needs quality leadership and proper congressional oversight. After examining his record, I think that Mr. Comey will prove to be that leader. Only time will tell, however, if this administration will allow Mr. Comey to engage the Congress and allow us to perform our constitutional duty of oversight to ensure that existing legislation and policies best serve this nation.

I thank Mr. Comey for his willingness to return to public service. And I urge my colleagues to support his nomination.

The PRESIDING OFFICER. The majority leader.

Mr. REID. With my friend's permission, I suggest the absence of a quorum. I need to talk to him about something that deals with the consent agreement I have here.

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

The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Madam President, I ask unanimous consent that cloture on Calendar No. 208 be withdrawn and that the Senate proceed to vote on confirmation of the nomination at 5:35 p.m.; the motion to reconsider be considered made and laid upon the table, with no intervening action or debate; that no further motions be in order; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session and proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each; further, that the vote on cloture on Calendar No. 223 occur on Tuesday, July 30, 2013, following leader remarks.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Madam President, I ask unanimous consent the quorum call be rescinded.

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

Mr. LEAHY. I yield back all remaining time.

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

Under the previous order, the question is, Will the Senate advise and consent to the nomination of James. B. Comey, Jr., of Connecticut, to be Director of the Federal Bureau of Investigation?

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

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MERKLEY (When his name was called). Present.

Mr. WYDEN (When his name was called). Present.

Mr. DURBIN. I announce that the Senator from North Dakota (Ms. Heitkamp) is necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from New Jersey (Mr. CHIESA), the Senator from Florida (Mr. RUBIO), and the Senator from Alaska (Mrs. MURKOWSKI).

Further, if present and voting, the Senator from New Jersey (Mr. CHIESA) would have voted ''yea.''

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

The result was announced—yeas 93, nays 1, as follows:

[Rollcall Vote No. 188 Ex.]

YEAS—93

Alexander	Enzi	Markey
Ayotte	Feinstein	McCain
Baldwin	Fischer	McCaskill
Barrasso	Flake	McConnell
Baucus	Franken	Menendez
Begich	Gillibrand	Mikulski
Bennet	Graham	Moran
Blumenthal	Grassley	Murphy
Blunt	Hagan	Murray
Boozman	Harkin	Nelson
Boxer	Hatch	Portman
Brown	Heinrich	Pryor
Burr	Heller	Reed
Cantwell	Hirono	Reid
Cardin	Hoeven	Risch
Carper	Inhofe	Roberts
Casey	Isakson	Rockefeller
Chambliss	Johanns	Sanders
Coats	Johnson (SD)	Schatz
Coburn	Johnson (WI)	Schumer
Cochran	Kaine	Scott
Collins	King	Sessions
Coons	Kirk	Shaheen
Corker	Klobuchar	Shelby
Cornyn	Landrieu	Stabenow
Crapo	Leahy	Tester
Cruz	Lee	Thune
Donnelly	Levin	Toomey
Durbin	Manchin	Udall (CO)
Udall (NM)	Warner	Whitehouse
Vitter	Warren	Wicker

NAYS—1

Paul

ANSWERED ''PRESENT''—2

Merkley Wyden

NOT VOTING—4

Chiesa Murkowski
Heitkamp Rubio

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session and proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

Mr. SCHUMER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

JUSTICE SAFETY VALVE ACT

Mr. LEAHY. Mr. President, last week the Department of Justice announced that the total U.S. prison population declined 1.7 percent from 2011 to 2012. I was encouraged to see that sentencing reform at the State level continues to pay dividends by simultaneously reducing prison costs and crime rates.

I am troubled, however, that the entirety of the reduction in the U.S. prison population was attributable to the States. The number of Federal prisoners actually increased by almost 1,500 from 2011 to 2012. While this increase was smaller than in previous years, the Federal Government can no longer afford to continue on the course of ever-increasing prison costs. As of last week, the Federal prison population was over 219,000, with almost half of those men and women imprisoned on drug charges. This year, the Bureau of Prisons budget request was just below $7 billion.

A major factor driving the increase in the incarceration rate has been the proliferation of Federal mandatory minimum sentences in the last 20 years. This one-size-fits-all approach to sentencing never made us safer, but it has cost us plenty. We must change course. In September, the Judiciary Committee will hold a hearing to examine the effects of Federal mandatory minimum sentences and measures to reform the system in order to combat injustice in sentencing and the waste of taxpayer dollars.

In March, I joined with Senator PAUL to introduce just such a measure. The Justice Safety Valve Act of 2013 will give judges greater flexibility in sentencing in cases where a mandatory minimum is unnecessary and counterproductive. Since its introduction, the Justice Safety Valve Act has received endorsements from a diverse group that spans the political spectrum, including articles written by George Will, Grover Norquist, David Keene, and the New York Times. I ask unanimous consent that these materials be printed in the RECORD at the conclusion of my remarks.

In addition to driving up our prison population, mandatory minimum penalties can lead to terribly unjust results in individual cases. This is why a large majority of judges oppose mandatory minimum sentences. In a 2010 survey by the U.S. Sentencing Commission of more than 600 Federal district court judges, nearly 70 percent agreed that the existing safety valve provision should be extended to all Federal offenses. That is what our bill does. Judges, who hand down sentences and can see close up when they are appropriate and just, overwhelmingly oppose mandatory minimum sentences.

States, including very conservative States like Texas, that have implemented sentencing reform have saved money and seen their crime rates drop. It is long past time that Congress follow their lead, and a Senate Judiciary Committee hearing on Federal mandatory minimum sentences is an important place to start.

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

[From the Hill's Congress Blog, Mar. 20, 2013]

PAUL-LEAHY SENTENCING BILL WILL ENSURE TIME FITS THE CRIME

(By Julie Stewart and Grover Norquist)

Even before the sequester took effect, the Obama administration's Department of Justice was warning that federal prison spending had become ''unsustainable'' and was forcing cuts in other anti-crime initiatives. Despite such warnings, we have seen little evidence of an administration strategy on how to control these costs. Fortunately, Senators Rand Paul (R-Ky.) and Patrick Leahy (D–Vt) today are stepping in to fill that void with the introduction of bipartisan legislation to restore common sense to our criminal sentencing laws.

The Justice Safety Valve Act of 2013 authorizes federal courts to depart below a statutory mandatory minimum sentence only after finding, among other things, that providing a particular defendant a shorter sentence—say, seven or eight years in prison for a drug offense rather than the 10–year mandatory minimum—will not jeopardize public safety. The bill does not require judges to impose shorter sentences, and for many crimes, the minimum established by Congress will be appropriate. But in cases where the mandatory minimum does not account for the offender's limited role in a crime or other relevant factors, the judge would be allowed to consider those factors and craft a more appropriate sentence.