

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-martial 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