

the Washington, DC, area where many people have spoken out and yet the owner remains in opposition of changing a name that has been clear to him is found to be racially offensive to Native Americans.

So we are here today to ask our colleagues on the other side of the aisle to join us. Join us because it was hard to unite our side, but I know with a few of their voices we can move this issue further.

Why is tolerance so important? In the words of Kofi Annan, the Secretary General of the United Nations:

Tolerance, intercultural dialogue, and respect for diversity are more essential than ever in a world where people are becoming more and more closely interconnected.

While that is a global view of the challenge we face, we need to practice that in reality here. That is why I was so happy we passed the Violence Against Women Act with a provision in it making sure that women in Indian Country would also be protected. We have to ask ourselves why did it take us so long to get that provision.

Even the U.N. Special Envoy on Indigenous Rights for Peoples around the world, James Anaya, also said that the NFL should change, basically saying it is a hurtful reminder and represents a long history of mistreatment in the United States of America. He cited the U.N. Declaration on the Rights of Indigenous Peoples:

They use stereotypes to obscure the understanding and reality of Native Americans today and instead help to keep alive a racially discriminatory attitude.

So even the U.N., the world community, is calling on this community to deal with this issue and we should act. I hope my colleagues will help us in this effort to get the NFL to do the right thing.

I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

#### BARRON NOMINATION

Mr. WHITEHOUSE. There has been considerable discussion on the floor about the nominee to the First Circuit, David Barron, that has hinged around his tenure in the Office of Legal Counsel and an opinion he wrote specifying the outer bounds of Presidential authority in the area of defending our national security against Americans who have signed up with organizations that do us harm. I wish briefly to bring to the attention of this Chamber that it is not the only issue with respect to David Barron and the Office of Legal Counsel.

The Office of Legal Counsel has indeed had a scandal, and it is indeed related to David Barron, but it is related to David Barron in the best possible way, in that he is the one who cleaned up the scandal. The scandal in question—the Presiding Officer is a former attorney general of her State and she will understand this very clearly—the

scandal in question related to the shabby opinions that were written by the Office of Legal Counsel to justify the torture program that was run by the Bush administration. When I say shabby, these were awful opinions. They were hidden from most peer scrutiny because they would not have stood up to peer scrutiny. They made errors as basic as failing to cite Fifth Circuit Court of Appeals decisions right on point.

There actually had been an incident in which the Department of Justice, where the Office of Legal Counsel is located, prosecuted a Texas sheriff for waterboarding victims in order to get confessions out of them. He was prosecuted as a criminal. He was convicted. The case went to the Fifth Circuit on appeal and in the course of their written decision on appeal, the Fifth Circuit Court of Appeals of the United States—one row below the U.S. Supreme Court—described the technique of water torture that was used, the waterboarding, and on a dozen separate occasions used the word “torture” to describe what was being done.

Look for that case in the Office of Legal Counsel. Look for that case in the opinion of Office of Legal Counsel about whether torture is accomplished by waterboarding, whether waterboarding is torture. It is not there. They didn’t even cite the case. It was a case they could have found in their own files because the Department of Justice was the organization that had prosecuted this sheriff as a criminal for that act.

If you wanted to bring it up as a case and try to find a way to distinguish it, I could accept that. I probably would disagree with that analysis, but the failure to even cite the case, knowing how difficult it would be for the torture program to go forward, I think is a sign of either the worst kind of incompetence or a deliberate fix being put into the opinion of the Office of Legal Counsel.

Having served as a U.S. attorney as well, I think the Department of Justice should have the best lawyers in the country, and within the Department of Justice the OLC prides itself on being the best of the best. It was a disgraceful departure of that standard when the torture opinions were allowed to pass. They simply don’t meet any reasonable test of adequacy. So on April 15, 2009, the Department of Justice withdrew the Office of Legal Counsel’s CIA interrogation opinions. The memorandum for the Attorney General effecting that withdrawal was signed by none other than David Barron. This was the instance of a man who absolutely did the right thing. He helped clean up a terrible mess that had been left at the Department of Justice. We should be proud of the conduct of David Barron at the Office of Legal Counsel.

I ask unanimous consent that the 1-page memorandum for the Attorney General signed by David Barron be printed in the RECORD.

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

#### WITHDRAWAL OF OFFICE OF LEGAL COUNSEL CIA INTERROGATION OPINIONS

Four previous opinions of the Office of Legal Counsel concerning interrogations by the Central Intelligence Agency are withdrawn and no longer represent the views of the Office.

APRIL 15, 2009.

#### MEMORANDUM FOR THE ATTORNEY GENERAL

Sections 3(a) and 3(b) of Executive Order 13491 (2009) set forth restrictions on the use of interrogation methods. In section 3(c) of that Order, the President further directed that “unless the Attorney General with appropriate consultation provides further guidance, officers, employees, and other agents of the United States Government may not, in conducting interrogations, rely upon any interpretation of the law governing interrogation . . . issued by the Department of Justice between September 11, 2001, and January 20, 2009.” That direction encompasses, among other things, four opinions of the Office of Legal Counsel: Memorandum for John Rizzo, Acting General Counsel of the Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, Re: Interrogation of al Qaeda Operative (Aug. 1, 2002); Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of 18 U.S.C. §§2340-2340A to Certain Techniques That May Be Used in the Interrogation of a High Value al Qaeda Detainee (May 10, 2005); Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of 18 U.S.C. §§234-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees (May 10, 2005); and Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: 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 (May 30, 2005).

In connection with the consideration of these opinions for possible public release, the Office has reviewed them and has decided to withdraw them. They no longer represent the views of the Office of Legal Counsel.

DAVID J. BARRON,

*Acting Assistant Attorney General.*

Mr. WHITEHOUSE. I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER (Ms. HEITKAMP). The clerk will call the roll. The assistant legislative clerk proceeded to call the roll.

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

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

#### UNANIMOUS CONSENT REQUESTS— H.R. 4031 and S. 1982

Mr. RUBIO. Thank you, Madam President.

I am here on the floor today to talk about an issue that has received a tremendous amount of attention, and

rightfully so, in the last few weeks and it is the outrage of what is happening at the Veterans' Administration.

Let me start by saying certainly people need to be held accountable. This should not be and it surely is not a partisan issue. I think we all have a deep commitment to helping our veterans, the men and women who spend time away from their families and put their lives on the line to defend this country, to whom were made promises that when they come back home they will be taken care of, especially those who have been harmed when serving their country.

We are heartbroken and outraged at the news that, in fact, the agency that is supposed to take care of them is not doing so. I think what is even more troubling is that this appears to be a systemic problem. This is not simply an isolated incident in Phoenix or some other institution in the country. This is now rearing its ugly head in every part of this country that we look into. You can imagine not just as an American am I deeply concerned about this but as a Floridian. Florida is a State with an enormous veterans population, including my brother—men and women who have served our country and have done so with great courage and dignity who now have health care needs that require immediate and urgent attention.

Just a moment ago on a television interview it was brought to my attention the story of a young man, a gulf war veteran who has a brain injury, who has been waiting for weeks to even be able to see anyone, in fact has been waiting for months with no end in sight as to when that is going to end. This needs to be addressed.

Yesterday we all watched with great attention as the President addressed this issue and expressed outrage, rightfully so, of what is occurring. What the President said is that over the next week there will be an initial report and ultimately a report at the end of the month about what needs to be done to improve the system and, more importantly, who needs to be held accountable. I think that is critical here, because one of the things we are learning is not simply that there is a systemic problem in the Veterans' Administration, but that there has been a deliberate effort by some within the Veterans' Administration to cover it up or to make things look better than they actually are. That should trouble us even more because the immediate reaction when an agency is confronted with a problem should be "we need to fix this" and instead the reaction by some seems to be "we need to cover this. We need to make this look better than it really is. We need to diminish this."

This is completely unacceptable and people need to be held accountable for this. If in the Senate among the men and women who serve and work here for us some were derelict in their duties, they would lose their job. If in the private sector someone did not do their

job, they would lose that job. In the military chain of command, if a commanding officer of a unit did not do his or her job, they would lose their job, and their superiors would have the ability to immediately discipline them.

So I think many Americans would be shocked to learn that even if the Secretary wanted today to fire executive managers within the agency, he cannot. Instead, he has to institute a long and drawn-out process, leading to this absurd conclusion that you are more likely to receive a bonus or promotion than you are to have been fired because of mismanagement and dereliction of duty. That is completely unacceptable.

We have to remember that the vast majority of the VA's more than 300,000 employees and executives are dedicated and hard-working people. Their Department's well-documented reluctance to ensure that leaders are being held accountable for mistakes is not only tarnishing its reputation, it unfortunately is impacting many of these hard-working men and women who are doing their jobs within the agency.

What I did a few weeks ago, in conjunction with my colleague from Florida, JEFF MILLER, is file a bill. It is a very simple and straightforward bill. The bill states that the VA Management Accountability Act of 2014 would simply give the VA Secretary the power to fire or demote senior executive service employees based on their performance. It is a power similar to the power the Secretary of Defense already has, for example, to remove military general officers from command, and, of course, it is the same power any one of our 100 Senators has to remove a member of their staff.

This bill passed yesterday in the House of Representatives, and it is sitting here on the desk in the Senate. It passed yesterday with an overwhelming bipartisan majority of Members of both parties who are outraged by what is occurring and want to bring accountability.

In a press conference yesterday, the White House indicated that they are very open to this concept and that they were interacting with leaders on it. We called the White House and asked them about it. They also indicated an openness to it, although they shared that they did have some concerns. They didn't make any suggested edits to the bill. They simply said they had some concerns, but in general they were supportive of this concept.

Earlier today during an Appropriations Committee meeting, Senator MORAN offered this very bill as an amendment, and it was adopted by voice vote without a single objection.

Here is where we stand: I have come to the floor today to give my colleagues the opportunity to send this to the President before we leave for the Memorial Day recess. We have an opportunity right now to take up the bill that the House just passed by an overwhelming bipartisan majority, enact it into law by unanimous consent, and

send it to the President so he can sign it. So when the results of that investigation come to his desk in a week or month from now, and that of the Secretary, they can discipline and/or fire the people who have not done their jobs and put our veterans in harm's way with regard to services the VA is supposed to offer. That is all this bill does—nothing more and nothing less.

We are giving the Secretary—appointed by this President and confirmed by this Senate—the opportunity to be able to fire employees of his agency who are not doing their jobs. That is all we are asking for. It is not more complicated than that. I do not understand why anyone would not support that concept.

It is right here for us. To everyone around here who is talking about how we need to quickly act, here is your chance. This is a very straightforward bill. My hope is that it will pass unanimously so we can truly say it is bipartisan.

We are not telling them whom they need to fire; we are giving the Secretary the power to hold the people who work under him accountable. This will also apply to future Secretaries as well. That is all this bill does. I hope we will be able to do that today.

I think if it were put to a rollcall vote on the floor, it would pass by an overwhelming majority. That is why, Madam President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 4031, which was received from the House, and I further ask consent that the bill be read a third time and passed and that the motion to reconsider be considered made and laid upon the table, without any intervening action or debate.

THE PRESIDING OFFICER. Is there objection?

Mr. SANDERS. Reserving the right to object, Madam President, I thank Senator RUBIO for his remarks, and I think many of us share the exact same concerns he has raised. When men and women put their lives on the line to defend our country, they are entitled to the best quality health care we can provide to them.

In my view and I think in the view of virtually every veterans organization, the VA does provide good-quality health care to those people who access the VA system, but there are very serious problems in terms of access, there are serious problems regarding waiting lists, there are serious problems regarding the possibility of hospitals keeping two sets of books, and we are going to get to the root of those issues.

The one thing we do not want to do is politicize the well-being of America's heroes.

I have a quote from an editorial in the Washington Post:

The men and women who have served their country in uniform deserve better than delay or denial of the medical care they need and have earned. So it is crucial to get to the bottom of allegations of misconduct at the

nation's veterans hospitals. America's veterans also deserve not to be treated as so many pawns in election-years gamesmanship—but that sadly is proving to be the case in Congress's increasingly hyperbolic response.

It goes on:

That the extent of wrongdoing is unclear doesn't seem to matter much to those more interested in scoring political points. How else to explain the knee-jerk calls, mainly by Republicans in the House and Senate, for the ouster of Veterans Affairs Secretary Eric K. Shinseki or the ill-advised and punitive legislation aimed at VA workers?

I will just make this point: I happen to think the bill that was passed in the House yesterday has many important provisions with which I happen to agree. But as the Senator from Florida knows, we have not held a hearing on this legislation, and some of us are old-fashioned enough to know that maybe folks in the Senate might want to know what is in the bill before we vote on it.

The Senator from Florida is right—it passed with very strong support in the House. In my view, a similar bill containing some of the salient provisions in the House bill will pass the Senate, but it is important that we discuss that bill.

One of the concerns I have is that I do not want to see the VA politicized. It is one thing to say—which I agree with—that if a hospital administrator is incompetent, the Secretary should be able to get rid of that administrator without a whole lot of paperwork. I agree with that. It is another thing to say that if a new administration comes in—whether it is Democratic or Republican—somebody sitting in the Secretary's office can say: I want to get rid of 20 or 30 or 50 hospital administrators because we have other people we want in there. We can just get rid of them, and they don't have a right to defend themselves.

I worry about that.

Clearly we have to discuss the issue. I suggest that the Senator from Florida understands that it is probably a good idea to discuss an issue before we vote on it.

The bottom line for me is, yes, every top administrator at the VA has to be held accountable. I do not want to see an enormous amount of paperwork and obstruction go forward before we can get rid of incompetent people. But before we vote on legislation, it might be a good idea to understand the full implications of that legislation, and there are some aspects of it with which I think some of us have concerns.

I have a few more points on that issue. I hope the Senator from Florida agrees with me that we have to be certain the VA is able to recruit and retain high-quality leaders and managers, especially when the VA is in competition with other Federal agencies for those leaders. To that end it is vital to ensure we are fostering an environment at the VA where individuals feel as if they are protected from the political whims of their leaders. That is the point I made earlier.

There are other areas that concern me in terms of setting precedents that may not be a good idea, but the bottom line is I think there are important provisions in the bill that passed the House. I want to work with Senator RUBIO on this matter, and I think the administration wants to work with him.

If I might, I will make another point, which is that I was very happy to see so much concern being paid to veterans' needs over the last few weeks. As chairman of the committee, I am very happy to see that.

I say to the Senator from Florida and others that he is well aware that the veterans community faces many serious problems above and beyond what we have been hearing over the last few weeks with regard to the VA. We have 200,000 men and women who have come back from Iraq and Afghanistan either with PTSD or TBI. I would assume my friend from Florida agrees they need to get the quality care they deserve.

An hour or so ago I had the privilege of being honored by the Gold Star Wives. They are the widows of men who died in action. I brought legislation to the floor that would have made it possible for Gold Star Wives to be able to get a college education under the post-9/11 GI bill. That bill received 56 votes. One Senator was absent; otherwise, we would have had 57 votes. Only two Republicans supported that bill. I suspect that Senator RUBIO and many others support that. That is in the bill I brought to the floor.

Right now we have—as I am sure Senator RUBIO knows because the problem exists in Vermont, so it most likely exists in Florida as well—70-year-old women, in most cases, who are taking care of disabled vets, and they don't get the support they need. They are on duty 24/7, and they save the government money because those wounded veterans are staying at home. They need some help. I want to see them get help, and I hope Senator RUBIO will work with me to make sure they get that help.

Senator RUBIO is aware, as is the Presiding Officer, that there is great concern not only in the military—the VA and DOD—but in the civilian sector that there is too much use of opiates to treat problems. We have a very serious problem in that area. We have language in our overall provision that extends help to the VA to move forward to give our veterans alternative treatments other than opiates, and we think that is a very important piece of legislation.

We have legislation which has passed which provides 5 years of free health care in the VA for those who served in Iraq and Afghanistan. We think it is important to extend that to 10 years.

Many veterans out there do not have access to decent-quality dental care. It is a problem in Vermont, and I suspect it is a problem in Florida. We want veterans to get that care as well. There is bipartisan support for advanced appro-

priations for VA, and we have that in our legislation.

While the VA is making good progress in cutting back the backlog and moving from paper to a digital system, I want to see them do better. We have language in there that would push them to do better.

Just this morning, Senator BURR and I were at a hearing that dealt with the educational problems facing veterans who come back from the battlefield. There are problems when they go to college. Most of us think veterans should be able to take advantage of in-state tuition in the State in which they are living.

Sexual assault has been a very serious problem in the military, and we want the VA to do better. Et cetera, et cetera.

I thank Senator HELLER and Senator MORAN for voting for this bill, along with every Democrat. I am very glad my Republican colleagues are now beginning to focus on veterans issues, and we need to step to the plate to help not only our veterans but their families, and that is the legislation I have offered.

I say to Senator RUBIO through the Chair that your legislation has many important provisions with which I happen to agree. There are some that I think need work, and we are going to hold a hearing on that legislation and other legislation in early June.

I respectfully object to that legislation right now, but I ask unanimous consent that the Senate proceed to Calendar No. 297, S. 1950, with the Sanders amendment, which is at the desk and is the text of S. 1982, the Comprehensive Veterans Health and Benefits Military Retirement Pay Restoration Act. That is the comprehensive legislation supported by virtually every veterans organization in the country, millions of veterans, and the American people. It says "thank you" to the veterans who put their lives on the line to defend this country, and we are going to be there for you.

I ask unanimous consent that this legislation be passed.

The PRESIDING OFFICER. Objection is heard to the request from the Senator from Florida.

Is there objection?

The Senator from Florida.

Mr. RUBIO. Reserving the right to object, I wish to address a couple of points. The first is on the issue of politicizing this. I agree. In fact, that is why I have not come forward and said that the Secretary should resign. There are times in this process when that is important. There are people who were appointed by the President who are clearly not doing their jobs, and it is our job as overseers of the executive branch of the government to step forward and say that.

I have said let's give the Secretary a chance to see what happens here. I may end up asking for his resignation at some point as more information comes out, but at a minimum I think he deserves an opportunity—and his successors, whoever they may be—to hold the

people underneath him accountable. They don't have the power to do that now.

Also notice when I came to the floor today, I have said absolutely nothing of a partisan nature. I am not claiming this is a crisis created by Democrats or by another party. On the contrary, I said this is a solution that has had strong bipartisan support in the House and strong bipartisan support in the committee today. This issue may become politicized in the sense that it seems all of the reluctance to move forward is coming from one side of the equation, but that does not necessarily have to be. In fact, I will tell my colleagues right now that I believe if this came to a vote, the overwhelming majority of the Members of the majority would support this legislation I have put forward today.

Two other points that were raised, one being that there have been no hearings. I would respectfully disagree. There was a hearing on it today. This was offered. This specific language was offered in the committee, and with little debate and no dissent, it passed by voice vote. For those watching at home, here is what voice vote means: They don't even call the roll. They basically ask Members: Is anyone against this? No one said they were. This language was adopted today in a committee.

Here is my second problem. I am glad to hear there are going to be hearings with regard to this issue, and I think that is important because I am not claiming the bill I am asking us to take up today and pass would solve all of the problems. There are still serious systemic problems within that agency, and a hearing needs to address this and find responsible solutions to those problems. So a hearing is called for.

What I am asking for is very simple: Give the Secretary, appointed by a President of a party different than my own, the power to fire employees underneath him who are not doing their jobs, so they know they are being held accountable. That is all I am asking. That is all this bill does. It is that straightforward. I don't think any of us want to go home for the Memorial Day recess and when we are asked: What are you doing on this issue, our answer is: Well, in about 15 days we are going to have a hearing on this crisis.

Meanwhile, the list goes on and on of the outrages that are coming out of this agency. Every single day more cases are coming out about veterans who are not being treated fairly and appropriately, and in some cases, in my opinion, criminally, by this incompetence we see out of some in the Veterans' Administration. This is a matter of urgency, because while we are gone on our recess, the President next week is going to get a preliminary report on what is going on. It may very well be that he wants to see some people fired, and it may very well be the Secretary will want to fire some people in senior executive positions and he will not be

able to do that. All I am asking for is not to give us the power to fire them but to give the administration the power to fire them and hold them accountable.

Regarding the bill the chairman has offered on the floor, this bill has already been debated, and there are problems with this bill, which is an extensive piece of legislation with many good elements in it, but it also has a cost issue at a time when our Nation owes close to \$18 trillion. That was the reason so many on my side of the aisle objected to it, and that is why I object to the motion made today by the Senator from Vermont.

The PRESIDING OFFICER. Objection is heard.

The Senator from Vermont.

Mr. SANDERS. Madam President, let me reiterate. When I quoted the Washington Post and when I talked about politicalization, I wasn't suggesting the Senator from Florida was being political on the floor today. What I was suggesting about politicizing the VA is if we have a situation, for example, where a new Secretary comes in or a new administration comes in and can fire wholesale hospital administrators, without the ability to defend themselves, I think that is not the kind of system the Senator from Florida would want or certainly I would want.

So how we address this issue is important. I would suspect that while this issue may have been taken up in committee today, I doubt very much there were any witnesses who testified about this bill.

Second of all, I found it interesting that the Senator from Florida said—and he is right that other Republicans have raised this point. The legislation I introduced, which again has the support of the American Legion, DAV, Vietnam Vets, Veterans of Foreign Wars, Iraq-Afghanistan Veterans of America, Paralyzed Veterans of America—he is right—it costs money. He is right. This country has a deficit. He would be right if he said that going to war in Iraq and Afghanistan has cost us trillions of dollars, which is one of the reasons we have the deficit we have. But I believe from the bottom of my heart that if we go to war, if we spend trillions of dollars on that war, that when our men and women come home from war, some wounded in body, some wounded in spirit—I don't want to hear people telling me it is too expensive to take care of those wounded veterans. I don't accept that. If we think it is too expensive to take care of veterans, don't send them to war.

So let me reiterate my view, as the Senator from Florida has raised an important issue. We are going to address it as quickly as we can, and we are going to address other issues facing our veterans who on this Memorial Day need to know we are there for them and their families.

Mr. RUBIO. Madam President, how much time remains?

The PRESIDING OFFICER. Under the previous order, the time until 1:40

is reserved for the Senator from Kentucky.

Mr. RUBIO. Not seeing the Senator from Kentucky, I ask for 1 minute of that time to make the following point—

Mr. SANDERS. Madam President, who has control of the time right now? Do I have the time?

The PRESIDING OFFICER. The time of the Senate is controlled by the Senator from Kentucky or his designee.

Mr. SANDERS. Madam President, let me suggest to the Senator from Florida that we divide the remaining time, if he wishes to take a minute or two and I will take a minute or two; how is that?

Mr. RUBIO. That is fine with me.

The PRESIDING OFFICER. The Senator from Florida.

Mr. RUBIO. Madam President, a bunch of issues were raised about the cost of the war in Iraq, how much money we spent, and how good we are at spending that money for the veterans. I think that is a valid debate and it is a debate we should have and should continue to have in this country. If we need to spend more money on these agencies, there are plenty of other places in the budget to find it, and we should work to make sure cost is not an issue.

But right now the central debate on the issue of what is happening in the VA has not centered around the fact that there are costs getting in the way. The central debate—and my colleagues know the President yesterday, in his press conference he held, said the central focus is on the management, the operations of this agency. Critical to the effectiveness of any agency is accountability; the ability to hold people accountable, including by taking away their jobs.

Think about this for a moment. The argument that has been made today about a new director can come in and fire the people who work underneath him or her, that argument could be made about virtually any organization on the planet. One could make that argument for staffers in the Senate, that we want to protect them, so if a new Senator is elected from a State, they can't hire their own staff.

The point I am trying to make—this is very simple. I get there are a lot of other issues we can talk about. There is one issue I want us to focus on, and that is this: We have a chance today, before we leave for the Memorial Day recess, to pass a bill that gives the Secretary that President Obama appointed the power to fire executives underneath him if they haven't done their job—a power he doesn't have right now. We have the chance to pass it on the floor. All we have to do is agree to it and it goes to the President to sign. We can then go home and say we have taken an important step in instituting accountability on this important issue, which the whole country is talking about, and we are walking away from that opportunity.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. We are not going to walk away from anything, but we are going to do it right. Again, the argument that when you run a health care system which has 151 medical centers, has some 900 community-based outreach clinics, has 300,000 employees that a new President can start wiping out, without necessarily giving people the right to defend themselves, does not make any sense to me.

So we are going to look at the positive provisions in Senator RUBIO's bill, and I think there are some. I would say to the Senator from Florida, I think we are going to reach an agreement. I think the Senator from Florida is going to be happy. I think it will be a good bill and we will reach consensus around it and I think we have to do that.

On the other hand, I wish to reiterate the point I made about money. Senator RUBIO is right, that one of the reasons we only had two Republican votes for a comprehensive piece of legislation that addresses the issues that the veterans communities brought to us—it is not a Bernie Sanders bill, it is a bill that listened to the needs of veterans and we said we hear you.

Once again, I would just say to the Senator from Florida, I don't think—I was just literally an hour ago at a function of the Gold Star Wives organization. These are women who have lost their husbands in battle. I think that under the post-9/11 GI bill, a very good and important piece of legislation, wives should have the right to use that legislation to go to college, get an education, so they can get better jobs. If I brought that bill to the floor today, I suspect I would have unanimous support, and I think that out of our committee the bill I brought forth, many provisions had unanimous support and many provisions were Republican provisions—good provisions, bipartisan provisions.

So what I say to my friend from Florida is thank you. The Senator's bill is an important bill and it is going to be dealt with and it will be dealt with in the very near future.

Mrs. FEINSTEIN. Madam President, I support the nomination of David Barron to serve on the U.S. Court of Appeals for the First Circuit.

There is no question that David Barron has the background and qualifications for this position.

Consider his credentials: over a decade as a Harvard law professor; 3 years at the Office of Legal Counsel, OLC, in the Clinton administration, and another 2 years at OLC under President Obama as the Acting Assistant Attorney General in charge of that office—during which time he was awarded the Office of the Secretary of Defense Medal for Exceptional Public Service and the National Intelligence Exceptional Achievement Medal from the Office of the Director of National Intelligence; he clerked for Justice John

Paul Stevens and Ninth Circuit Judge Stephen Reinhardt; he earned his bachelor's and law degrees from Harvard; and a substantial majority of the ABA Committee found him to be “well qualified,” their highest rating.

In sum, David Barron's record shows that he will be a jurist of the highest caliber.

He also has a strong record of standing up for what is right on many issues, whether it is campaign finance or gay rights.

Many distinguished individuals in both parties have written to the Judiciary Committee to support Professor Barron. Among them are: Jack Goldsmith, a Harvard Law professor and former head of OLC under President George W. Bush, Michael McConnell, conservative law professor and former Tenth Circuit judge, who described Barron as “one of President Obama's two or three best nominations to the appellate courts;” Charles Fried, law professor and former Solicitor General under President Reagan; 15 former career attorneys at OLC who served in administrations of both parties; and Ron George, former chief justice of California and someone I deeply respect.

Chief Justice George wrote:

As a person who served for 38 years in a state court system, the last 14 years as chief justice of California, I have been particularly impressed by Mr. Barron's understanding and respect for the critical role played by the states and their courts in our federal system.

I respected the strong desire of some of my colleagues to have access to the two OLC memos related to the targeted killing of an American named Anwar al-Awlaki. Those memos were authored while Barron was Acting Assistant Attorney General at OLC.

However, I regret that even though the administration made those two opinions available to all Senators and even though the administration has recently decided to make the OLC analysis public, some still insist on delaying a vote on Professor Barron's nomination.

Let's contrast David Barron's nomination with that of another former head of the Office of Legal Counsel, Jay Bybee, who led the office from 2001 to 2003.

He was in charge of OLC when it produced an opinion saying waterboarding and nine other so-called enhanced interrogation techniques were not torture. On August 1, 2002, Mr. Bybee signed an opinion that set an unconscionably high bar for torture by saying that “physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” That opinion was withdrawn during the Bush administration by Bybee's successor, Harvard Law Professor Jack Goldsmith.

Under Bybee, OLC also produced opinions about President Bush's Ter-

rorist Surveillance Program that contain very troubling legal analysis. Because those opinions remain classified, I will not describe them here other than to note that they authorized a secret surveillance program that involved the collection of the content of communications without a court order and was in clear violation of the Foreign Intelligence Surveillance Act. Those OLC opinions also were withdrawn by Bybee's successor, Professor Goldsmith.

Despite the fact that those opinions were produced when he was head of OLC, Jay Bybee was nominated by the Bush administration to a Nevada seat on the Ninth Circuit. He was confirmed 74 to 19 in March 2003. I was one of 19 voting no.

Why would we confirm the man who approved the so-called “torture memos” and led OLC when it approved President Bush's surveillance program but delay David Barron, who produced superior legal work as head of OLC? The only reason I have heard is that Senators may believe that the two OLC opinions on Anwar al-Awlaki should be made public. Let me address that.

First, this week the Department of Justice took steps to ensure that the OLC analysis will be made public. The Justice Department has decided not to appeal a court order from the Second Circuit Court of Appeals requiring the OLC analysis to be made public. So this will happen in the near future.

Second, Professor Barron left OLC in 2010—well before the strike killed Awlaki in Yemen in September 2011. Since 2010, Professor Barron has been in academia.

It wasn't Barron's decision to withhold the OLC memos from Congress or from the public.

Let me quote from Professors Laurence Tribe and Charles Fried, both legal experts often on opposite sides of issues. They wrote an op-ed together about Barron in the Boston Globe. It reads, in part:

[Barron] has not advocated, much less ordered, the withholding of any documents. His job as acting head of the Office of Legal Counsel was to provide thorough, accurate, and unvarnished legal opinions to the president and other executive officials, based on the traditional legal authorities of text, history, and precedent. We have every reason to believe that is precisely what he did, and there is absolutely no evidence to the contrary.

In fact, Professor Barron implemented policies that have made OLC more rigorous, professional, and transparent.

First, when he was acting head of OLC, Barron ordered the withdrawal of several opinions related to coercive interrogation that had been issued during the Bush administration.

Second, on July 16, 2010, Professor Barron wrote a memo entitled “Re: Best Practices for OLC Legal Advice and Written Opinions” that updated previous OLC guidance. It said that OLC “operates from the presumption that it should make its significant

opinions fully and promptly available to the public. This presumption furthers the interests of Executive Branch transparency, thereby contributing to accountability and effective government, and promoting public confidence in the legality of government action." This presumption did not exist in the Bush administration; David Barron was responsible for establishing it as OLC policy. Given Barron's impressive record and his shift of OLC toward more transparency, it simply is wrong to oppose his nomination because a classified OLC opinion on drone strikes has not been made public yet, a decision that was not even his to make.

Since the OLC opinions on Anwar al-Awlaki that Professor Barron wrote seem to have become the issue holding up this nomination, let me close with a reminder of the specific plotting Awlaki was involved in before he was killed in 2011.

True, Awlaki was a dual U.S.-Yemeni citizen, but he served as chief of external operations for Al Qaeda in the Arabian Peninsula, AQAP. In that position, he planned and directed attacks against the United States, making him an imminent and continuing threat.

Awlaki played a significant operational role in AQAP. In 2010, the United States designated Awlaki a "Specially Designated Global Terrorist" for "supporting acts of terrorism and for acting for or on behalf of AQAP."

Awlaki publicly urged attacks against U.S. persons and interests worldwide. He worked with another American named Samir Khan to publish AQAP's *Inspire Magazine* to encourage terrorist attacks against innocent men, women, and children in the United States and elsewhere. As a reminder, *Inspire Magazine* provided the Tsarnaev brothers in Boston with the instructions for making the bomb they used at the Boston Marathon last year.

Let me offer just a few examples of Awlaki's direct involvement in terrorist operations:

**Christmas Day Attack**—In December 2009, Awlaki directed operative Umar Faruk Abdulmutallab, who attempted to detonate an explosive device aboard a Northwest Airlines flight to Detroit on Christmas Day. Awlaki instructed Abdulmutallab to detonate the device while over U.S. airspace to maximize casualties.

**Fort Hood Attack**—Fort Hood shooter Nidal Hasan attended al-Awlaki's sermons in Virginia and corresponded at least 18 times with him through email. After the attack, Awlaki posted on his blog praising Hasan's actions and calling him his "student and brother."

**Times Square Bombing Attempt**—Faisal Shahzad, who pleaded guilty to the 2010 Times Square car bombing attempt, told interrogators in early 2010 that he was "inspired by" Awlaki and communicated with him.

**Package Bomb Plot**—in October 2010, Awlaki had a direct role in supervising

and directing AQAP's failed attempt to bring down two U.S. cargo aircraft by detonating explosives concealed inside two packages mailed to Chicago-area synagogues.

In sum, there is no doubt that Awlaki was chief of external operations for Al Qaeda in the Arabian Peninsula, AQAP, and a continuing and imminent threat to the United States.

David Barron's legal analysis of whether the United States can target Awlaki is cogent, careful legal analysis and reflects the kind of consideration of due process that we should applaud, not punish.

Barron certainly should not be disqualified because he was the head of OLC when that targeting decision—a targeting decision Barron did not advocate for—was being contemplated and analyzed by the Obama administration.

Let me conclude by saying this: David Barron is an impressive lawyer and scholar with a strong record. Nobody doubts that. Distinguished lawyers on both sides of the aisle have endorsed him wholeheartedly.

The reason for this is simple: His qualifications are first rate, and he has under his belt many years of commendable scholarship and service to this nation.

Simply put, he will be an outstanding jurist for the people of the First Circuit, and I very much hope my colleagues will support him.

#### WRRDA CONFERENCE REPORT

##### ECOSYSTEM RESILIENCY

Mr. WHITEHOUSE. Madam President, I am joined by the chair and ranking member of the Environment and Public Works Committee to discuss a provision of the Water Resources Reform and Development Act conference report, which we will vote on shortly in the Senate. I thank them for their leadership on this important legislation, and rise with them today to discuss one of its provisions.

Section 4014 of the conference report, Ocean and Coastal Resiliency, creates a new Army Corps authority to address ocean and coastal ecosystem resiliency.

Subject to appropriations, this authority requires the Army Corps of Engineers to work with the heads of other Federal agencies, like the National Oceanic and Atmospheric Administration and the Fish and Wildlife Service, State governors and other State officials, and nonprofit organizations, to conduct a study identifying projects in coastal zones to enhance ocean and coastal ecosystem resiliency. State and local leaders often have the best information about the changing conditions of their oceans and coastal zones, and participation by them in the Army Corps' study process is intended to ensure the most effective resiliency projects are identified in the study.

In Rhode Island there are numerous entities, from our Coastal Zone Management Agency to our National Estu-

ary Program, the University of Rhode Island, and Save the Bay that would bring important information and expertise to the process for identifying coastal resiliency projects in Rhode Island. In other States I know there will be similar interest.

Subject to appropriations, the study and project list will be updated every 5 years, to ensure that best available science and policies are informing project identification and selection.

When funding is provided for this program through the appropriations process, the Army Corps may carry out identified projects in accordance with the criteria for existing Corps Continuing Authority Program authorities.

Mrs. BOXER. I thank Senator WHITEHOUSE. As chair of the conference committee for WRRDA, a committee on which the Senator from Rhode Island and Senator VITTER also served, I agree with the Senator's understanding of section 4014. Like Rhode Island, California also has strong leadership on coastal and oceans issues and will benefit from increased collaboration with the Corps of Engineers on coastal and ocean resiliency issues.

Mr. VITTER. I share Chairman BOXER's and Senator WHITEHOUSE's understanding of section 4014, and will address subsection (d) of that provision, "Request for Projects." Subsection (d) is an important provision because it requires approval by the governor or chief executive officer of a State before the Corps can carry out any project identified under this section.

Mr. WHITEHOUSE. The conference committee's deliberations were informed by a legal analysis prepared by the Corps of Engineers Counsel regarding the interpretation of Section 4014.

I ask unanimous consent that the legal analysis prepared by Scott Murphy, Senior Counsel for Project Agreements and Reports in the Office of the Chief Counsel of the U.S. Army Corps of Engineers Headquarters, which describes how the Corps would implement this provision, be printed in the RECORD at the end of this colloquy.

The legal analysis, dated May 8, 2014, states that Section 4014 authorizes "an independent coastal zone resiliency study and follow-on construction authority for projects to the extent they satisfy criteria for projects carried out under four named CAP authorities." In other words, Section 4014 relies on the terms and conditions of four pre-existing authorities but it is not limited by the authorized levels in those authorities.

Mrs. BOXER. The Army Corps was clear that when a project is identified in the study associated with Section 4014, it may be carried out in accordance with the criteria for one of the four existing CAPs referenced in the section, but it will be not funded through or authorized by those CAP authorities. Section 4014 provides its