

people. The pervasive attitude among the administration was that civil liberties are a nuisance rather than an inalienable right.

I spoke to the President's nominee to be Attorney General a short time ago, Judge Mukasey. I told him I admire his willingness to take this job. He has a good background, a good record. We will find out what happens during the time the hearings take place before the Judiciary Committee. But I told him that never in the history of our country have we had a Justice Department in such a state of disrepair, and he realizes that.

But as we turn to the Defense authorization bill this week and likely the next, we in Congress have an opportunity to reassert our allegiance to the Constitution and the core American values for which it stands, values that have made America the world's beacon of freedom for more than two centuries.

Senators will have a chance to show whether they support the inalienable right of habeas corpus, something that is talked about in our Constitution—the right to petition a court to review the grounds for a detention. Senators will have an opportunity to review the cost, both fiscally and morally, in maintaining the Guantanamo Bay detention facility, and whether closing it will do more to further the fight against terrorism and advance America's values, as I believe it would, than keeping it open indefinitely. We hope to debate the administration's use of so-called enhanced interrogation techniques and whether we should bring the practices of intelligence agencies under the same rules that our military believes are proper under the Army Field Manual; in effect, no more torture.

The Defense authorization bill is also our next best chance to continue our efforts to force President Bush to change course in an intractable civil war in which we find ourselves involved in Iraq. Last week the President delivered yet another prime-time address to the Nation on his Iraq policy and once again he announced he has no intention to change his failed war plan. He has given neither a convincing rationale to continue the war nor a plan to end it. Meanwhile, brave American troops continue to be killed and grievously wounded, our Treasury is being depleted at an ever faster rate, the Iraqi Government has made no progress in political reconciliation, and those responsible for attacking us on 9/11 grow stronger, as indicated in the latest video from Osama bin Laden. Today brings news that the President will not even return our troop presence in Iraq to presurge levels next year, meaning that a year from now we will be dug in even deeper than we were a year ago in Iraq.

The President's speech last week made one thing clear, though: He has no intention of changing course. He plans to keep the status quo through the duration of his administration with

the hope that if we stick around long enough, something, anything, will start going right; and if it doesn't—and there is no sign it will—he will leave it to the next President to clean things up.

We could start to change course now. The overwhelming majority of the American people and the majority of Congress are ready to do just that. A majority of Senators has voted to send legislation to the President that will force him to change the mission and begin to bring our troops home, but the Republican leadership so far has not allowed the voice of the majority to be heard. By requiring a 60-vote margin on all Iraq-related votes, they have repeatedly filibustered the will of the people and blocked the new direction our troops deserve. As long as our brave soldiers and marines remain mired in the crossfire of another country's civil war, we can continue fighting to responsibly end this war. We all know it will take the courage of our Republican colleagues to stand up to the President. A few have, and I admire and respect them. We know standing up to their President is not easy, but it is the right thing to do. It is long past time for those Republicans who expressed opposition to this endless war to work with us to find a way to end it; otherwise, this is not only Bush's war but the war of the Republican Senators as well, because we all know there has been little support in the House or the Senate by Republicans to change the direction of the war in Iraq.

Next week we will turn our attention back to the Children's Health Insurance Program, known as SCHIP. This remarkably successful program was enacted a decade ago to fill a crucial gap in insurance, the gap between the children of families who often have private health insurance and the children of the very low-income families who are covered by Medicaid. But between the two, millions of children whose families neither qualify for Medicaid nor can afford private insurance were left uninsured—left without medical attention most of the time. Today 6.6 million children have insurance because of this program started 10 years ago. That is a 35-percent reduction in the number of uninsured children of working families. The program has been a remarkable success by any means, and a great example of what the State and Federal Government can do in a tangible way to make peoples' lives better.

Earlier this summer, an overwhelming bipartisan majority in the Senate voted to reauthorize and approve this outstanding program. Next week we will vote on a compromise version between the House and Senate and send it to the President's desk. The bill we send to the President will continue the program and provide insurance for millions more children of working families. For many, it will replace emergency room care with regular checkups; it will mean proper dental care; it will mean preventive medicine.

Study after study shows that kids enrolled in the Children's Health Insurance Program are much more likely to have regular doctor and dental care. The report shows that these children report lower rates of unmet need for care, the quality of care they receive is far better than it was before, and school performance improves. The plan is helping to close a disparity in care for minority children and it has become a major source of care for rural children.

There is no doubt, no question at all, that the Children's Health Insurance Program is good for children, good for families, and it is certainly good for our country. This bill will be the product of real bipartisan cooperation.

I appreciate very much the work of Chairman BAUCUS and Ranking Member GRASSLEY of the Finance Committee, and the work of Senators ROCKEFELLER and HATCH. They have done the right thing for this country.

The President, though, has threatened to veto this legislation. This is pretty surprising because listen to what he said in the 2004 election campaign, a direct quote:

In a new term, we will lead an aggressive effort to enroll millions of poor children who are eligible but not signed up for the government health insurance programs. We will not allow a lack of attention, or information, to stand between these children and the health care they need.

I take the President at his word and expect he will live up to this promise. I hope before issuing more threats, he will take a real look at what he said before, and the legislation we are sending to him. It has the support of so many Democrats and so many Republicans for a reason. It is an example of Government at its best, lending a helping hand, providing a safety net to children who need a boost to reach their full potential. All too often we hear what Government can't do. The Children's Health Insurance Program is a stellar example of what we can do. I am confident the Senate will not be intimidated by the President's veto threats, especially, I repeat, based on what he told us during the reelection campaign of 2004. For the President to do anything less would be his not keeping his word. So I hope once again we will vote to pass this legislation with strong bipartisan support.

I ask my unanimous consent request also include any statement my friend, the Republican leader, may give.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

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#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

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#### NOMINATION OF JUDGE MUKASEY

Mr. McCONNELL. Mr. President, today the President nominated Judge

Michael Mukasey to be our Nation's 81st Attorney General. He has impressive credentials. I look forward to learning more about his record.

In this regard, the Judiciary Committee should promptly hold hearings on his nomination, carefully examine his record, and vote in a timely manner. For the past several months our Democratic colleagues have told us we need to install new leadership at the Justice Department and that we "can't afford to wait," in their words.

A successful nominee, they have told us, is someone with integrity and experience, who respects the rule of law and who can hit the ground running. The senior Senator from New York has assured us that he and his colleagues would not obstruct or impede someone with these qualifications.

Judge Mukasey appears to be just such a nominee. He is a former Federal prosecutor and Federal judge with extensive experience, especially in terrorism-related matters. He served on the Federal trial bench for 19 years, and for the last 6 years of his career he has been the chief judge on the U.S. District Court for the Southern District of New York.

He presided over the 1993 World Trade Center bombing case, in which he was widely respected for his equanimity, intelligence, and deep appreciation for the complex legal issues at stake.

The prosecutor, Andrew McCarthy, recently wrote a compelling first-hand account of Judge Mukasey's conduct in that case for the *National Review*. I ask unanimous consent to have the article printed at the close of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MCCONNELL. In the article, Mr. McCarthy notes the Second Circuit Court of Appeals, after upholding Judge Mukasey's work, took the highly unusual step of praising his handling of the case. Here is what the court of appeals wrote:

The trial judge, the Honorable Michael B. Mukasey, presided with extraordinary skill and patience, assuring fairness to the prosecution and to each defendant and helpfulness to the jury. His was an outstanding achievement in the face of challenges far beyond those normally endured by a trial judge.

Judge Mukasey has earned the deep respect and admiration of the lawyers who have appeared before him and of the many other public servants who have observed and studied his work. His intelligence, experience, and fair-mindedness would seem to make him an ideal candidate to lead the Justice Department.

At the very least, these qualities warrant timely and fair consideration of his nomination by the Judiciary Committee. Unfortunately, recent press reports, including a *Roll Call* article from just a couple of hours ago, indicate that at least some Democrats

on the Judiciary Committee are more interested in dragging out this nomination than in installing new leadership at the Justice Department.

They have said they might hold Judge Mukasey's nomination hostage in order to extract still more administration documents in the U.S. attorneys matter.

This would be extremely unfortunate. By injecting politics into the confirmation process, committee Democrats would be turning their backs on earlier public comments that installing new leadership at the Department was of critical importance. They would be turning their backs on earlier public assurances that they would not obstruct or impede—again their words—a nominee with Judge Mukasey's qualities.

Now is the chance for our Democratic colleagues to prove they were serious when they cried out for new leadership at the Justice Department by following Senate precedent, weighing the nominee's qualifications, and voting in a timely fashion.

I would hope they would not hold him hostage, forgetting the words of the senior Senator from New York, who has told us:

This Nation needs a new Attorney General and it cannot afford to wait.

In these times, it is especially important that the Senate act promptly. We are at war, and as the distinguished ranking member has noted: Apart from the Defense Department, no department of the executive branch is more important to defending our Nation than the Department of Justice.

We need to act. Now, I understand that Judge Mukasey will begin his courtesy visits tomorrow with Members of the Senate. I am hopeful my colleagues will be able to meet with him so the Senate can begin considering his nomination as soon as reasonably possible.

#### EXHIBIT 1

JUDGE MUKASEY WOULD MAKE A STELLAR ATTORNEY GENERAL; A GIFTED FORMER PROSECUTOR AND RENOWNED JURIST COULD BE JUST THE RIGHT FIT.

(By Andrew C. McCarthy)

It is not exaggeration to say that the United States Department of Justice is among the handful of our nation's most important institutions. It is the fulcrum of our rule of law.

The department must be above reproach. It must enforce our laws without fear or favor. It must be the place the courts, the Congress and the American people look to without hesitation for the most unflinching recitation of fact and the most reliable construction of law. Creativity is welcome—it is the department's proud boast always to be home for some of the world's most creative legal minds. Defense of executive prerogatives is also essential—for the department is not the servant but the peer of the judges and lawmakers before whom it appears, with its first fidelity to the Constitution. Creativity, however, is not invention, and prerogative is not partisanship.

The department must foremost be the Department of Justice. Its emblem is integrity. We can argue about where the law should

take us, in what direction it should evolve. We must first, however, be able to know what it is. For that, we must be able to rely without question on the department and its leader, the attorney general.

President Bush is about to select a new attorney general at a particularly tempestuous time. In today's Washington, even national security has not been spared from our fulminating politics. In the cross-fire, we need stalwart leadership of incontestable competence and solid mooring in the department's highest traditions. Without it, a growing crisis of confidence will grip not only the courts but field prosecutors across the nation.

To address such a crisis, the President is fortunate to have several able candidates. One I know particularly well, though you may not, would instantly restore the department's well-deserved reputation for rectitude, scholarship, vision and sober judgment. He is Michael B. Mukasey.

I had the privilege of appearing before Judge Mukasey for nearly three years, from 1993 into 1996, when, as an Assistant U.S. Attorney in the Southern District of New York, I led the prosecution of Sheikh Omar Abdel Rahman and eleven other jihadists who had waged a terrorist war against the United States—bombing the World Trade Center, plotting to strike other New York City landmarks (including the United Nations complex, the FBI's lower Manhattan headquarters, U.S. military installations, and the Lincoln and Holland Tunnels), and conspiring political assassinations against American and foreign leaders.

The case was bellwether for 9/11 and its aftermath, presenting all the complex and, at times, excruciating issues we deal with today: the obscure lines a free society must draw between religious belief and religiously motivated violence, between political dissent and the summons to savagery, between due process for accused criminals with a right to present their defense and the imperative to shield precious intelligence from incorrigible enemies bent on killing us.

The trial was probably the most important one ever witnessed by . . . nobody. In an odd quirk of history, our nine-month proceeding began at the same time as, and ended a day before, the infamous O.J. Simpson murder trial. While Americans were riveted to a televised three-ring circus in California, Judge Mukasey, in his meticulous yet decisive way, was demonstrating why our judicial system is the envy of the world: carefully crafting insightful opinions on the proper balance between national security and civil liberties, permitting the government to introduce the full spectrum of its evidence but holding it rigorously to its burden of proof and its ethical obligations; managing a complex litigation over defense access to classified information; and developing jury instructions that became models for future national-security cases.

All the defendants were convicted, and the sentencing proceedings, complicated by the need to apply novel federal guidelines to a rarely used, Civil War era charge of seditious conspiracy, ended in the imposition of appropriately lengthy jail terms. No one, however, could contend that the case had not been an exemplar of our system at its best. Indeed, in an unusual encomium, the Second Circuit Court of Appeals, upon scrutinizing and upholding the judge's work, was moved to observe:

"The trial judge, the Honorable Michael B. Mukasey, presided with extraordinary skill and patience, assuring fairness to the prosecution and to each defendant and helpfulness to the jury. His was an outstanding achievement in the face of challenges far beyond those normally endured by a trial judge."

No one should have been surprised. By the time the Blind Sheikh's trial was assigned to him, Judge Mukasey had already forged a reputation as one of America's top trial judges. (In my mind, he is peerless.) That was so because he was also one of America's most brilliant lawyers. From humble beginnings in the Bronx, he had earned his bachelor's degree at Columbia before graduating from Yale Law School in 1967. As a judge, he tolerated nothing but the best effort from prosecutors because he had, himself, been a top prosecutor. He well understood the enormous power in the hands of young assistant U.S. attorneys, the need to temper it with reason and sound judgment. He grasped implicitly and conveyed by example that the great honor of being a lawyer for the United States Department of Justice is that no one gets, or should expect to get, an award for being honest and forthright. It is a realm where those attributes are assumed.

In 1988, Michael Mukasey left a lucrative private law practice when President Ronald Reagan appointed him to the federal bench. He was exactly the credit to his court and his country that the President had anticipated. Quite apart from terrorism matters, he handled thousands of cases, many of them high-stakes affairs, with skill and quiet distinction. In his final years on the bench before returning to private practice, he was the Southern District's chief judge, putting his stamp on the court—especially in the aftermath of the September 11th attacks. Through the sheer force of his persistence and his sense of duty, the court quickly reopened for business despite being just a few blocks away from the carnage. Indeed, it never really closed—Judge Mukasey personally traveled to other venues in the District to ensure that the court's vital processes were available to the countless federal, state and local officials who were working round the clock to investigate and prevent a reprise of the suicide hijackings.

Characteristically, the judge ensured that the Justice Department was able to do its vital work in a manner that would withstand scrutiny when the heat of the moment had cooled. Judges, himself included, made themselves available, day and night, to review applications for warrants and other lawful authorization orders—no one would ever claim that in his besieged district, crisis had trumped procedural regularity. And as investigators detained material witnesses and scrambled to determine whether they were mere information sources or actual terror suspects, Judge Mukasey made certain that there was a lawful basis for detention, that detainees were represented by counsel fully apprised of that basis, and that the proceedings were kept on a tight leash—under strict judicial supervision, with detainees promptly released unless there was an independent reason to charge them with crimes.

Judge Mukasey's mastery of national security issues, reflecting a unique fitness to lead the Justice Department in this critical moment of our history, continued to manifest itself after 9/11. He deftly handled the enemy-combatant detention of Jose Padilla (recently convicted of terrorism crimes), forcefully endorsing the executive branch's wartime power to protect the United States from an al Qaeda operative dispatched to our homeland to conduct mass-murder attacks, but vindicating the American citizen's constitutional rights to counsel and to challenge his detention without trial through habeas corpus. Later, in accepting the Federal Bar Council's prestigious Learned Hand Medal for excellence in federal jurisprudence, Judge Mukasey spoke eloquently of the need to maintain the Patriot Act's reasonable national security protections. More recently, he has written compellingly as a

private citizen with unique insight about the profound challenges radical Islam presents for our judicial system.

At this moment in time, the nation would be best served by an attorney general who would bring the department instant credibility with the courts and Congress, provide a needed shot in the arm for prosecutors craving a reminder of the department's proud traditions, and reassure the public of the administration's commitment to the department's high standards. There are precious few people who fit that bill, and of them, Michael Mukasey may be the least well known nationally. But he is as solid as they come. Our country would be well served if he were asked, once again, to answer its call.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until the hour of 3:00 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided between the two leaders or their designees.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from West Virginia is recognized.

Mr. BYRD. I thank the Chair.

#### 220TH ANNIVERSARY OF THE UNITED STATES CONSTITUTION

Mr. BYRD. Mr. President, today, September 17, in this year of Our Lord, 2007, marks the 220th anniversary of the signing of the Constitution of the United States. Praise God.

Across the Nation, many students, teachers, and historians are spending at least part of their time today reviewing, learning about, and, most of all, appreciating the U.S. Constitution.

Although not as flashy looking as the American flag on Flag Day, or as bedecked in sparklers and fireworks as the celebration of the Declaration of Independence on the Fourth of July, the workhorse that is our Constitution truly merits a day of appreciation by all citizens.

The Constitution is a living, breathing document, still as full of passion, patriotism, jealousy, and intrigue after 220 years as the star of any long-running soap opera. Perhaps it is because the Constitution, similar to soap op-

eras, deals with the relations between human beings in society.

The Constitution, in its articles and amendments, lays out the roles for its actors: the executive, the legislature, the judiciary, the States, and the rights of individuals.

The script is pretty basic: Run a country and ensure the welfare of its citizens. But being human, people never seem content with playing out their own roles as written. James Madison aptly observed that:

[T]he essence of Government is power; and power, lodged as it must be in human hands, will ever be liable to abuse.

History is replete with examples of governmental actors who have improvised, seeking to expand their own role and put their name in bigger lights at the expense of the other players. Fortunately, history is also full of examples in which the grasping star's excesses are checked by the concerted actions of the rest of the cast. It is a fascinating read, and well worth one's time. Federal versus States rights, the freedoms of individuals versus the need for order in society, protection from tyranny pitted against a strong executive, declarations of war and peaceful diplomacy—these are some of the great themes, the high dramas written into the Constitution and played out over the course of our Nation's history. Our Founding Fathers truly knew what they were doing when they crafted a document that hoped for the best, most noble instincts in men but guarded against the worst.

As James Madison famously observed, "If men were angels, no government would be necessary." At the same time, however, he also noted that "All men having power ought to be mistrusted," so the foundation of all the checks and balances in the Constitution is the premise that "ambition must be made to counteract ambition." As a result, the Constitution has found itself in a constantly shifting political landscape created by the ebb and flow of Executive power, legislative control, judicial counterbalancing, Federal expansion, and individualism. These great themes are all played out in many smaller scenes each year, from each nomination through each budget submission, authorization, and appropriations bill, and each Supreme Court case.

I have always found this historical drama more stimulating and absorbing than any television reality show. Perhaps it is because the constitutional drama has played such a large role in my own long life. In the 220-year history of this Nation's Constitution, there have been only 1,896 individuals fortunate enough to serve as Senators. I am number 1,579 out of 1,896. I have served in the Senate for one-quarter of the Senate's history—not quite an original cast member but pretty close. Amen. You better believe it.

But whether each citizen has an active role in our Constitution drama or is merely a spectator, the Constitution