

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

plays a large role in the life of every citizen. I encourage everyone, every citizen to read the Constitution—read the Constitution—read the Constitution and to read the Federalist Papers as well as other writings by our Founding Fathers. Read deeply in history; with all thy volumes vast hath but one page. Read deeply in history and biography, and read the newspapers and follow what is happening in Washington.

Do not believe everything you see, do not believe everything you hear, but view it through the prism of the Constitution—the Constitution—the Constitution. Be your own Supreme Court and decide if the arguments put forth by the White House, the Congress, the press, and the pundits are in accordance with the Constitution and with the intent of the immortal Framers. Then and only then will you become the most valuable of all things: a true defender of liberty, an informed citizen.

Mr. President, I close with a poem—a great poem—by Henry Wadsworth Longfellow entitled “O Ship of State.” Our Constitution is our ship, the heart and soul of our Nation, and the stalwart vessel that will carry our Nation’s liberty into the future. Long, long, long may it live.

O Ship of State,  
Thou, too, sail on, O Ship of State!  
Sail on, O Union, strong and great!  
Humanity with all its fears,  
With all the hopes of future years,  
Is hanging breathless on thy fate!  
We know what Master laid thy keel,  
What Workmen wrought thy ribs of steel,  
Who made each mast, and sail, and rope,  
What anvils rang, what hammers beat,  
In what a forge and what a heat  
Were shared the anchors of thy hope!  
Fear not each sudden sound and shock,  
’Tis but the wave and not the rock,  
’Tis but the flapping of the sail,  
And not a rent made by the gale!  
In spite of rock and tempest’s roar,  
In spite of false lights on the shore,  
Sail on, nor fear to breast the sea!  
Our hearts, our hopes are all with thee,  
Our hearts, our hopes, our prayers, our tears,  
Our faith triumphant o’er our fears,  
Are all with thee—are all with thee!

Mr. President, I note 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. McCONNELL. 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.

#### DC VOTING RIGHTS ACT

Mr. McCONNELL. Mr. President, on a hot September afternoon in 1787, 55 men put away their quills after 4 months of hard work in the Pennsylvania statehouse. The U.S. Constitution was finally finished. One of the delegates read it aloud, and then the oldest man in the room rose to speak.

Benjamin Franklin had seen a lot in his 81 years. Now, pointing to an image

of the Sun that was painted onto the back of a chair in the convention hall, he saw something else. That Sun, he said, was rising. It was a hopeful metaphor which was meant to put the nervous delegates at ease. When Franklin finished speaking, everyone left the stuffy convention hall and retired to a local tavern for dinner. And then they all went home.

Two hundred twenty years later to the day, we remember the courage and the wisdom of those 55. And we recommend ourselves to the task of upholding and defending the wise and durable document they wrote. As a political document, the U.S. Constitution is without equal in the history of man. And as its political children, we consider it an honor and a sacred duty to defend it. Doing so today does not involve the risk to life and property that it did back then. But it does require a constant vigilance against anything that would erode it, especially from within the government itself. And this is why I rise.

The senior Senator from West Virginia does his country a great service every time he reminds us of the value and the binding nature of the Constitution. It was he who designated by law 3 years ago that September 17 should be recognized and celebrated as Constitution Day. And so I think it is rather fitting that I should fulfill my duty this week as a guardian of that document by voting against a motion to proceed to a bill that constitutes, in my view, a fundamental assault against it.

The bill itself would grant congressional representation to residents of the District of Columbia. And let me make something very clear to my colleagues, to the citizens of my State, and to the rest of the country from the outset: my opposition should in no way be interpreted as opposition to the enfranchisement of any constitutionally eligible American. As the lead Senate Republican cosponsor of the Help America Vote Act, my commitment to the franchise rights of Americans should be clear to everyone in this Chamber.

I have long fought for making it easier to vote and harder to cheat. The right to vote is fundamental, and I will fight any attempt to dilute or impede that right.

My opposition to this bill rests instead on a single all-important fact: it is clearly and unambiguously unconstitutional. It contravenes what the Framers wrote, what they intended, what the courts have always held, and the way Congress has always acted in the past. And to vote for it would violate our oath of office, in which we solemnly swear to support and defend the Constitution. If the residents of the District are to get a member for themselves, they have a remedy: amend the Constitution. But the Members of this body derive their authority from the Constitution. We are its servants and guardians. And we have no authority to change it on our own.

Amending the Constitution would not be necessary, of course, if the framers had intended the District to be treated as a State for purposes of representation. But they clearly did not. As article 1, section 2, states:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States.

That is not ambiguous. Every resident of a State, therefore, is entitled under the Constitution to congressional representation. Yet no similar representation is accorded to the residents of areas that are not so designated. One of these areas, in particular, is mentioned explicitly later on in the same article.

In article 1, section 8, the so-called District clause, the Framers gave Congress power over a new Federal district and any other Federal lands purchased by the Federal Government. Article 1, section 8 states:

Congress shall have power to lay and collect taxes over such District as may, by cession of particular states, and the acceptance of Congress, become the Seat of Government of the United States and to exercise like authority over all places purchased by the consent of the legislature . . .

The Framers clearly envisioned the Federal city as a separate entity from the States, as an entity they themselves would control. James Madison, the Constitution’s primary author, explained why in Federalist 43. The seat of government couldn’t be in one of the states, he said, because of the potential benefits that would accrue to that State, either material or in reputation, as a result of that distinction.

Moreover, lawmakers themselves should not be dependent on the good favor of any one State or its residents to carry out their business. A third reason, perhaps even more relevant in a time of terrorist threats, is that the District’s independence would allow it to relocate if need be.

So the Framers spelled it out explicitly in the original text. They also explained what they meant. The District of Columbia has been many things: a Federal enclave, a Federal city, even, under President Johnson, a Federal agency. But the District of Columbia has never been a State. And for this reason, according to the Constitution, it does not get congressional representation.

This is not a novel interpretation of the text. The historical record is full of proof that Congress and the courts have always interpreted the Constitution as denying congressional representation to residents of the Federal district. When Congress decided to change the way senators are elected in the early 1900s, they did it the right way, through the amendment process. And consistent with article 1, section 2, this amendment understands as eligible for representation only those Americans who reside in a State.

Half a century later, in 1961, the 23rd amendment was ratified, granting residents of the District the right to vote in Presidential elections. It states: