

hospital bedside of stricken Attorney General Ashcroft. He is the man who stood up against the warrantless wire-tapping program and stopped it until it was brought right. He is the center, by all accounts, of what would have been essentially the resignation of the attorneys at the top of the Department of Justice if the White House had not blinked and backed down. This is a man who knows something about independence and integrity, and he vouches for Eric Holder.

Louis Freeh, who was the Director of the Federal Bureau of Investigation, wrote this:

I am certain that Eric has the highest legal competence, total integrity, leadership, and, most importantly, the political independence to discharge faithfully the immense trust this Nation reposes in its Attorney General . . . In all of Eric's interactions with me as FBI Director, as well as in his close coordination with my Deputy and other Assistant Directors who also had extensive and sometimes daily contact with him, Eric always displayed total integrity, courageous leadership, complete fairness, and, once again and most importantly, political independence.

Former Attorney General Bill Barr, former Deputy Attorney General George Terwilliger, and others wrote that:

Mr. Holder's 30-year professional career has consistently been characterized by unflinching integrity and a commitment to political independence . . . Eric Holder is the right man at the right time to protect our citizens in the critical years ahead.

There is a powerful record behind Eric Holder of political independence. The measure of independence is not whether you decide against the President or your party on every question, every time; the measure is whether you decide against the President or your party when the facts and the law direct it. In my view, Eric Holder has met that standard. And in the view of Republican Attorney General and Deputy Attorney Generals and people who have served with distinction and know him well, they agree he has fully met that standard.

I take the Senate's role in the confirmation process very seriously. I believe the Judiciary Committee must and, under the leadership of Chairman LEAHY, will closely examine Mr. Holder's record and his qualifications. It is our duty. At the end of that process, I believe the majority of colleagues will agree with me and with so many others that Eric Holder is the right person at the right time to restore our Department of Justice to its rightful standing as the defender of what is good and what is honorable and what is true in our Nation.

I yield the floor, and 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. DURBIN. 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.

Mr. DURBIN. Mr. President, it is my understanding we are in morning business.

The ACTING PRESIDENT pro tempore. We are.

NOMINATION OF ERIC HOLDER

Mr. DURBIN. Mr. President, last month, President-elect Obama designated Eric Holder to be the next Attorney General of the United States. When President-elect Obama made this choice, there was virtual universal praise from both sides of the aisle.

Republican ORRIN HATCH of Utah, the former chair of the Senate Judiciary Committee, said Eric Holder was "an excellent choice," in his words, and that "I intend to support him." My colleague, Senator JEFF SESSIONS of Alabama, said, "I think his instincts on law and order are good" and that he was "disposed to support" Eric Holder. Senator TOM COBURN of Oklahoma said: "I think it's a good choice."

It is not hard to see why the initial response to Eric Holder's selection was so positive. After all, Mr. Holder had been confirmed unanimously by the Senate in 1997 for the position of Deputy Attorney General.

As the No. 2 person at the Justice Department, Mr. Holder supported broadening the authority of independent counsel Ken Starr, a difficult decision that was criticized by many Democrats. Mr. Starr's investigation led to the impeachment of President Clinton. And Mr. Holder recommended the appointment of a special prosecutor to investigate Interior Secretary Bruce Babbitt, a member of President Clinton's Cabinet.

Earlier in his career, Eric Holder had been appointed by President Ronald Reagan to serve as a judge. He was later appointed by President Clinton to be the U.S. attorney in Washington, DC. In that position, he earned a reputation for independence. He prosecuted public officials of both political parties during the 12 years he served as a career prosecutor in the Justice Department's Public Integrity Section.

So it is no wonder Mr. Holder's nomination to serve as Attorney General was met initially with strong bipartisan praise.

Unfortunately, some Senators are now questioning the character of Eric Holder. What has happened? Why the change? Why the initial positive reaction of a man who has served as a prosecutor, as a judge, as the No. 2 man in the Department of Justice, someone who has faced thousands of decisions, a person who was first appointed under a Republican President, then a Democratic President? Why this change?

Well, it is attributable in part to someone who has surfaced again on the American political scene and has been very vocal in his criticism of Eric Holder. That person is Karl Rove. I am

sure we all recall Karl Rove. He used to be President Bush's top political strategist. Today he works as a high-priced political consultant.

In a TV interview last month, Mr. Rove called Eric Holder "the one controversial nominee" among President-elect Obama's Cabinet choices. A Washington Post reporter who had been covering the Holder nomination said in an interview:

Word on the street is that Karl Rove is going to be helping lead the fight against Eric Holder when his nomination for Attorney General heads up to the Senate.

That is unfortunate. I am confident, however, that at the end of the day, when Eric Holder comes before the Senate Judiciary Committee this week for his nomination hearing, he will answer the questions directly and show the Senate and the American people that he is an excellent choice to be our next Attorney General.

I met with Eric Holder in my office last month. I had similar meetings with President Bush's Attorney General nominees: Michael Mukasey, Alberto Gonzales, and John Ashcroft.

In my meetings with all four of these nominees, I asked each of them about their views on issues that were central to the mission of the Department of Justice. I asked them about a variety of different issues: human rights, civil rights, civil liberties, national security, and access to justice. I tried to take the measure of each man, and to gain a sense of whether they would have the independence and integrity for the job.

In my opinion, Eric Holder stood head and shoulders above the others. Let's take one example, but a critically important example, the issue of torture.

The late historian Arthur Schlesinger, Jr., said this about the torture policy of the Bush administration:

No position taken has done more damage to the American reputation in the world—ever.

Historian Schlesinger, of course, has written about the American history of the 19th and 20th centuries, and I think he understood as much if not more than others that some of the graphic scenes and details of torture under the Bush administration have created, unfortunately, sad memories among people across the world.

Sadly, that policy of torture was aided and abetted by the last two Attorneys General. Instead of defending the rule of law, the Bush administration's Justice Department set aside our treaty obligations and redefined torture with evasive words and with a wink and a nod.

During his confirmation hearings, Gonzales told me it was legally permissible for the United States of America to subject detainees to cruel, inhuman, and degrading treatment. But cruel, inhuman, and degrading treatment are clearly prohibited by the Torture Convention, a treaty we ratified and are bound to obey.

I drafted legislation to overturn this Bush administration policy and make it clear that cruel, inhuman, or degrading treatment is prohibited in all circumstances. I will tell my colleagues that my bill did not pass, but a virtually identical bill introduced by Senator JOHN MCCAIN, which I was proud to cosponsor, did pass overwhelmingly. It was obvious that Senator MCCAIN was the right person to carry this issue. His experience as a detainee and prisoner of war during the Vietnam conflict gave him more credence on this issue than anybody else on the Senate floor. He stood and spoke not only for the American people but for a great tradition in American law. He was criticized and there were objections from Vice President CHENEY and others, but Senator MCCAIN's position prevailed in the Senate.

After Alberto Gonzales departed as Attorney General under a cloud of scandal, I had hoped that the Justice Department would be able to turn a new page with the nomination of Michael Mukasey. He had served as a Federal district court judge. He was an accomplished attorney. He was someone who I thought came to this job with the capacity to put perspective on some of the most contentious issues. During his confirmation hearing on the second day, I asked Mr. Mukasey a simple, straightforward question: Is the torture technique known as waterboarding legal?

Now, waterboarding is a torture technique that was used as long ago as the Spanish Inquisition in the 15th century. Following World War II, the United States prosecuted Japanese military personnel as war criminals when they were accused of waterboarding U.S. prisoners. The Judge Advocates General, the highest ranking lawyers in the U.S. military, told me and testified unequivocally that waterboarding was illegal. But Mr. Mukasey, at his confirmation hearing for Attorney General, refused to answer my question and to this day still refuses to acknowledge that waterboarding is torture.

President-elect Barack Obama has made it clear that he will reclaim America's role as champion and defender of fundamental human rights. He said—and I quote my former Senate colleague, President-elect Obama:

No administration should allow the use of torture, including so-called 'enhanced interrogation techniques' like water-boarding, head-slapping, and extreme temperatures. It's time that we had a Department of Justice that upholds the rule of law and American values, instead of finding ways to enable the President to subvert them. No more political parsing or legal loopholes.

I believe Eric Holder will fulfill the President-elect's commitment. When I met with Mr. Holder, I asked him the same simple question I had asked Michael Mukasey: Is waterboarding illegal? Without hesitation, Mr. Holder looked me straight in the eye and said—and I quote—"Senator, waterboarding is torture."

After hours of questioning Michael Mukasey on that simple, obvious fact when he refused to answer straightforwardly, here we have a nominee for Attorney General who has made it clear that America is going to return to the values we have held dear for generations, and I think returning to those values will help restore our position and credence in the world.

Indeed, Mr. Holder has spoken out repeatedly about this issue—not just in meeting with me privately. For example, last June in a speech before the American Constitution Society he said:

Our needlessly abusive and unlawful practices in the "war on terror" have diminished our standing in the world community and made us less, rather than more, safe.

Alberto Gonzales, the former Attorney General, said the United States could engage in cruel, inhuman, and degrading treatment. Listen to what Eric Holder said during his speech to the American Constitution Society:

We must declare without qualification that it is the law, policy, and practice of the United States Government that we do not torture people and we do not subject people to cruel, inhuman, or degrading treatment.

What a stark contrast from the evasive words we heard from Alberto Gonzales and the refusal of Attorney General Michael Mukasey to address this issue directly.

I can assure my colleagues that Eric Holder will bring about a welcome change in the Department of Justice and a welcome change that our Nation is anxious to see. He possesses the experience, the wisdom, and the integrity to be an outstanding Attorney General. He is a leader who can rebuild the morale within the Justice Department and restore faith among the American people in this important agency. We all remember that chapter in the history of the Department of Justice when so many U.S. attorneys were unceremoniously dismissed from their positions, many of whom had never had any criticism leveled at them for their professional work. Questions have been raised over and over as to whether this was just a political move or what. The fact is, I am sure it took its toll on the morale of the department. We have a chance with Eric Holder to restore it. It is critical because without faith in our system of justice, our democracy is in danger.

I wish to address one final matter that some of my Republican colleagues have talked about: the pardon of Marc Rich in the closing days of the Clinton administration. In January of 2001 President Clinton issued a pardon for Marc Rich, who had been convicted of tax evasion and who had fled the country. Presidents have the power to issue pardons and commutations, and they seek the advice of the Justice Department on which requests to grant and which to reject. On January 19, 2001, the last full day of the Clinton Presidency, the White House called Eric Holder at the Justice Department to ask him his opinion about Marc Rich.

Without spending much time examining the pardon request, Eric Holder indicated he did not oppose it.

In retrospect, when I asked him directly in my office, Mr. Holder admitted that comment was a mistake. He acknowledged that the Rich pardon should not have been granted and that he should have sought the input of other Justice Department officials about this recommendation. It was a lapse in judgment, and Mr. Holder has openly acknowledged it.

Now, many of us who have spoken out on the Senate floor have occasionally said things we wish we hadn't said. We are, as a matter of course, given permission to revise and extend our remarks if we make a mistake, but it is rare in public life. Senators do it, Congressmen do it, and occasionally elected officials do it—to just say flat out, "I made a mistake." Eric Holder has been open and honest about that. I value that. In the thousands of decisions he faced as the No. 2 man in the Justice Department, there are only a handful that have even raised a question, and he has been open and honest in saying that this was not the right thing to do.

There is probably no one in America more disappointed by that pardon of Marc Rich than the man who prosecuted him, James Comey. You may remember Mr. Comey; I sure do. He is a Republican who served for a few years as the Deputy Attorney General at the Justice Department under John Ashcroft. He was the one who stood up to President Bush and refused to authorize the President's secret surveillance program during the critical period when John Ashcroft was hospitalized and Mr. Comey served briefly as the Acting Attorney General. Earlier in his career as an assistant U.S. attorney in New York, Mr. Comey was the prosecutor in charge of the Marc Rich case. He knows the case better than any of us. He strongly opposed the pardon of Marc Rich by President Bill Clinton, as did his colleagues in the U.S. Attorney's Office in New York. However, Mr. Comey sent a letter to the Senate Judiciary Committee a few weeks ago in support of the nomination of Eric Holder. I wish to read from it. He said:

I have come to believe that Mr. Holder's role in the Rich and [co-defendant Pincus] Green pardons was a huge misjudgment—

Mr. Comey wrote to the committee—one for which he has, appropriately, paid dearly in reputation.

Mr. Comey went on to say:

Yet I hope very much he is confirmed. I know a lot of good people who have made significant mistakes. I think Mr. Holder's may actually make him a better steward of the Department of Justice because he has learned a hard lesson about protecting the integrity of that great institution from political fixers. I'm not suggesting errors of judgment are qualification for high office, but in this case, where the nominee is a smart, decent, humble man who knows and loves the department and has demonstrated his commitment to the rule of law across an

entire career, the error should not disqualify him. Eric Holder should be confirmed as Attorney General.

That statement of support is from James Comey, a Republican, and the chief prosecutor of Marc Rich who was entrusted with major responsibilities in the Department of Justice under President Bush. He is a man who knows that Department very well.

Mr. Rogers's opinion is also shared by Larry Thompson, another prominent Republican who served for several years as Deputy Attorney General under President Bush. Mr. THOMPSON had this to say about Eric Holder and the Rich pardon:

There's no way you can have a high-profile job in Washington like the deputy attorney general without attracting some kind of controversy. That matter has been fully investigated, and it should be put behind him.

Let me also read the statement of another high-profile Republican, Ed Rogers, who served in two Republican White Houses. Mr. Rogers said:

Under the Constitution, the President's authority to pardon is unlimited. There was no deceit or malfeasance by Holder. Everyone knows this was Bill Clinton's initiative. Eric Holder is innocent.

Then he added:

the Rich pardon is no bar to Eric Holder being an effective Attorney General—even though we Republicans and some in the media will enjoy rehashing it.

You can question Eric Holder's judgment in the Marc Rich case, but you can't question his integrity, his independence, and his character.

A few days ago the Senate Judiciary Committee received a letter of support for Eric Holder from 10 prominent Republican lawyers, including former Attorney General William Barr and former chief counsel to Senator ARLEN SPECTER of Pennsylvania, Michael O'Neill. This is what the letter said:

Due to his character and experience, Eric today enjoys the endorsement of literally thousands of law enforcement officials from across the country, including NAPO (the National Association of Police Organizations), NDAA (National District Attorneys Association), PERF (Police Executive Research Forum), NSA (National Sheriffs' Association), NAAUSA (National Association of Assistant U.S. Attorneys), and NOBLE (National Organization of Black Law Enforcement Executives). . . . As former federal prosecutors and senior officials of the Department of Justice we are profoundly aware of the challenges that the Department and the country are facing. Eric Holder is the right man at the right time to protect our citizens in the critical years ahead.

It is worth noting that Eric Holder also has the public support of former FBI Director Louie Freeh, as well as the National Fraternal Order of Police, which is the world's largest organization of sworn law enforcement officers.

One final point: Eric Holder is a historic selection. If confirmed, he would be the first African-American Attorney General in our Nation's history. When I was growing up, there were laws in some States that prevented African Americans from drinking out of the same water fountains as Whites, at-

tending the same schools, and using the same restrooms, restaurants, swimming pools, and other public accommodations. It is one more measure of how far America has come that we now have a chance to confirm a distinguished African American to be the top law enforcement officer in America.

After 8 years of the Justice Department trampling the Constitution and often putting politics over principle, we now have a chance to confirm a nominee with strong bipartisan support who can restore the Justice Department to its rightful role as the protector of our laws and renew America's faith in our system of justice.

This week, before the Senate Judiciary Committee, on which the Presiding Officer also serves—we will have an opportunity to ask questions of Mr. Holder. I will be asking him many of the same questions I have asked of former Senator Ashcroft, Mr. Gonzales, and Mr. Mukasey.

The answers, I am sure, will be significantly different, showing that we are about to launch a significant change in America, a change which the American people voted for overwhelmingly in November and a change that will be carried forward in a very positive way at the Department of Justice by Eric Holder as our next Attorney General.

I yield the floor.

TRIBUTE TO MITCH MCCONNELL

Mr. HATCH. Mr. President. I rise today to honor my good friend MITCH MCCONNELL, the Senate minority leader whose strong leadership, sterling example and wise counsel have earned him an honored position within the ranks of the extraordinary public servants who now serve or have served in the U.S. Senate.

Senator MCCONNELL is the second Kentuckian to lead his party in the U.S. Senate, the first being Senator Alben Barkley, who led Senate Democrats from 1937 to 1949. MITCH is now the longest-serving Republican Senator in Kentucky history, eclipsing the previous record held by the legendary Senator John Sherman Cooper.

Today, Senator MCCONNELL has been serving as a U.S. Senator for almost a quarter century. During that time, four U.S. Presidents, scores of colleagues, and several crises have come and gone, but MITCH has carried on with courage, boldness and steadfastness. He has weathered the most turbulent political seas and has always been a calming influence on his Senate colleagues while at the helm.

Few would have predicted that Senator MCCONNELL would have such staying power when he was first elected to the Senate in 1984 by a razor-thin margin—less than half a percentage point. But political pundits and prognosticators often only skim the surface or state the obvious and give short shrift to the characteristics that matter most in the making of an outstanding leader.

In other words, they didn't really know MITCH MCCONNELL. They didn't know about how he overcame polio at age 2, undergoing an intensive therapy regimen at the Roosevelt Warm Springs Institute for Rehabilitation and obeying doctors' orders not to walk or run for 2 years. That took determination, and MITCH showed that early on.

Senator MCCONNELL's service to his State and Nation is as varied as it is impressive. After serving as a student body president and graduating with honors at the University of Louisville College of Arts and Sciences in 1964, he went on to law school at the University of Kentucky, where he was elected president of the Student Bar Association and earned a law degree.

He followed that by working as an intern for Senator John Sherman Cooper and as a chief legislative assistant to Senator Marlow Cook, which provided him with invaluable experience in Washington, DC. Other stints followed: He was deputy attorney general under President Gerald R. Ford and a county judge-executive in Kentucky until he was sworn in as a U.S. Senator on Jan. 3, 1985.

In whatever position Senator MCCONNELL has served, he has unfailingly served with distinction. I have had the good fortune of working with MITCH for years, dating back to his election as a freshman Senator, when he became the first Republican to win a statewide race in Kentucky since 1968. In fact, MITCH was the only Republican in the Nation in 1984 to defeat a Democrat incumbent.

To his considerable credit, MITCH has been defying the odds ever since. For example, during his tenure as chairman of the National Republican Senatorial Committee during the late 1990s and early 2000s, the Republicans controlled the Senate—in large part due to his leadership.

MITCH MCCONNELL is a conservative's conservative who gets high marks from the American Conservative Union and all who know him. Moreover, he is a scholar and able defender of the Constitution and this great country. Knowing just how deadly terrorists can be, he is deadly serious about protecting America. He also is an outspoken advocate of the first amendment and a tremendous parliamentary tactician. When MITCH MCCONNELL talks, people listen and pay heed—almost always with excellent results.

As good a Senator as MITCH is, he is an even better man—one who places principals above partisanship. His love for his State and our Nation is second to none. He also is loyal, honest and unflappable, which explains why he is held in such high esteem by his Senate colleagues on both sides of the aisle.

MITCH is a devoted family man. He is the proud father of three beautiful daughters and the loving husband of outgoing U.S. Secretary of Labor Elaine Chao. And he is utterly devoted to the people of Kentucky he so ably