

doubt about his commitment to the rule of law. I voted against the two previous Attorneys General because of their involvement in one issue: torture.

As White House Counsel, Alberto Gonzales was an architect in the Bush administration's policy on interrogation, a policy which has come into criticism not only in the United States but around the world. His successor, Michael Mukasey, refused to repudiate torture techniques such as waterboarding. That was unfortunate because Mr. Mukasey really brought a stellar resume to the job, but that really was a bone in my throat that I couldn't get beyond, and I voted against his nomination.

Now, during his confirmation hearing, Eric Holder gave a much different response. When asked directly, he said: "Waterboarding is torture."

Those three words resonated throughout the committee room and across the Nation among many Americans who had been concerned about this important issue and literally gave a message to the world that there was a new day dawning in Washington.

I also asked Mr. Holder the same question I asked Attorneys General Gonzalez and Mukasey: Does he agree with the Judge Advocates General, the four highest ranking military lawyers, that the following interrogation techniques violate the Geneva Conventions: painful stress position, threatening detainees with dogs, forced nudity, or mock execution. Mr. Holder said:

The Judge Advocate General Corps are in fact correct that those techniques violate Common Article 3 of the Geneva Conventions.

Some of my colleagues on the other side of the aisle have suggested that Eric Holder's opposition to torture will somehow lead to a witch hunt against former Bush officials. Frankly, this seems like a weak excuse to delay the confirmation of a well-qualified nominee.

Here are the facts: President Obama and Eric Holder made it clear that while no one is above the law, the administration is going to move forward, not back. The goal to investigate the Bush administration does not come from the Obama administration but from others such as retired major general Antonio Taguba, who led the U.S. Army's official investigation into the Abu Ghraib prison scandal.

Here is what General Taguba recently said:

The Commander in Chief and those under him authorized a systematic regime of torture. . . . there is no longer any doubt as to whether the [Bush] administration has committed war crimes.

In the words of General Taguba:

The only question that remains to be answered is whether those who ordered the use of torture will be held to account.

Indeed, the facts are troubling. Former President Bush and former Vice President Cheney have acknowledged authorizing the use of waterboarding which the United States

had previously prosecuted as a war crime. Susan Crawford, the Bush administration official who ran the Guantanamo military commissions, said that the so-called 20th 9/11 hijacker cannot be prosecuted because "his treatment met the legal definition of torture."

Now it appears some Republicans are holding up Eric Holder's nomination because of the problems of the previous administration. A headline in the Washington Post this last Sunday highlighted the irony. It said: "Bush Doctrine Stalls Holder Confirmation." Apparently, some Republicans are opposing Eric Holder because of their concern that former Bush administration officials may be prosecuted for committing war crimes.

Here is what the junior Senator from Texas said:

I want some assurances that we're not going to be engaging in witch hunts.

But Mr. Holder has made it clear in his testimony there will be no witch hunts. He testified:

We will follow the evidence, the facts, the law, and let that take us where it should. But I think President-elect Obama has said it well. We don't want to criminalize policy differences that might exist between the outgoing administration and the administration that is about to take over.

The junior Senator from Texas also expressed concerns about Eric Holder's "intentions . . . with regard to intelligence personnel who were operating in good faith based upon their understanding of what the law was." But Mr. Holder has made his intentions clear. He testified:

It is, and should be, exceedingly difficult to prosecute those who carry out policies in a reasonable and good faith belief that they are lawful based on assurances from the Department of Justice itself.

What more would you expect a man aspiring to be Attorney General to say? It certainly would be inappropriate to seek an advance commitment from any nominee for Attorney General that they will definitely not investigate allegations of potential criminal activity. No responsible Attorney General would ever say that, nor should that person be confirmed if they made that statement.

Senator LINDSEY GRAHAM, another Republican member of the Judiciary Committee, recognizes that fact. Senator GRAHAM, also a military lawyer still serving, said:

Making a commitment that we'll never prosecute someone is probably not the right way to proceed.

He went on to say:

I don't expect [Holder] to rule it in or rule it out. In individual cases if there's allegations of mistreatment, judges can handle that and you can determine what course to take.

I think Senator LINDSEY GRAHAM has hit the nail on the head. I hope no one will use this false specter of a witch hunt as an excuse to oppose a fine nominee.

I say to my colleagues, if you have an objection to Eric Holder based on his

qualifications, vote against him. But don't oppose him because the previous administration may have been guilty of wrongdoing which may lead to a prosecution. There are too many hypotheticals in that position. In fact, these misdeeds are the reasons we need Eric Holder's leadership.

Here is what President Obama has said about the need to reform the Justice Department:

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 a President to subvert them. No more political parsing or legal loopholes.

I think Eric Holder is the right person to fill the vision of President Obama. After 8 years of a Justice Department that too many times put politics before principle, we now have a chance to confirm a nominee with strong bipartisan support who can restore the Department to its rightful role as guardian of our fundamental rights.

I urge my colleagues to support Eric Holder's nomination.

AMENDMENT NO. 39

Mr. DURBIN. Mr. President, I ask unanimous consent that the pending Baucus amendment No. 39 be agreed to, the motion to reconsider be laid upon the table, and the bill, as thus amended, be considered as original text for the purpose of further amendment.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate resumes consideration of H.R. 2 on Wednesday, the time until 11 a.m. be for debate with respect to McConnell, et al., amendment No. 40, with the time equally divided and controlled between the majority and Republican leaders or their designees; that no amendments be in order to the amendment prior to a vote in relation to the amendment; that at 11 a.m. the Senate proceed to vote in relation to the McConnell amendment, No. 40; provided further, if the McConnell amendment is agreed to, the bill, as thus amended, be considered as original text for the purpose of further amendments.

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

MORNING BUSINESS

Mr. DURBIN. I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

FURTHER CHANGES TO S. CON. RES. 70

Mr. CONRAD. Mr. President, section 227 of S. Con. Res. 70, the 2009 Budget resolution, permits the chairman of the Senate Budget Committee to revise the allocations, aggregates, and other appropriate levels in the resolution for