

know how he got started as an expert fiddler by virtue of the story he told us of receiving the gift of a violin as a child.

I thank the Senator for his comments, and I thank the Senator for yielding.

Mr. ALLARD. I would also like to join with the Senator in commending Senator BYRD for his distinguished service in the Senate. We all respect him. Whether we agree with him or not, he is one of the more honorable Members here, somebody I appreciate. He has joined on the Budget Committee; I am new on the Budget Committee. I am looking forward to visiting with him about those issues as they come up before the Budget Committee. I think it is going to be a challenging year, and it is an important committee. It is an important start for the Congress.

Hopefully, we will get some legislation quickly reported out of there, as we get the process moving forward.

Again, I am glad we have all these animal lovers here in the Senate. I talked to Senator ENSIGN, who is in the Chair, about facetiously setting up a veterinary caucus. With all these comments, I begin to take it more seriously. We would like to perhaps extend an invitation to all the dog lovers here in the Senate, to see if they would like to join us.

Mr. BYRD. I thank the Senator.

#### NOMINATION OF JOHN ASHCROFT

Mr. ALLARD. Mr. President, I come to the floor this evening to lend my support to President Bush's nomination of John Ashcroft to be the next United States Attorney General. He is another individual in the Senate whom I have always viewed as quite honorable.

It is the constitutional right and duty of each President to appoint Cabinet Members who will help serve the citizens of this great country during their tenure. I believe President Bush has made a wise choice in John Ashcroft as a member of his Cabinet.

John Ashcroft is a man of great honor and high personal integrity. He will bring these much needed characteristics to the office of the U.S. Attorney General. I have no doubt about that. He has had a long and distinguished career serving the people of Missouri and the people of the United States. I am confident he has the experience to fulfill the duties of this position.

Those who defended President Clinton to the death are now attacking one of the most honorable individuals of the Senate as less than honorable. This was most evident by Senator Ashcroft's gracious concession to his opponent in his Senate race in Missouri.

John Ashcroft served as Missouri's attorney general from 1976 to 1985, where he worked tirelessly to enforce Missouri State laws and chaired the

National Association of Attorneys General; having been supported in that position, I might add, by both Democrats and Republicans. After serving his home State as their top law enforcement agent, he was elected as Missouri's 50th Governor in 1984. He was reelected in 1988 to a second term, where he received 64 percent of the vote.

It was during his second term that he was recognized as a leader among his colleagues and was named chairman of the National Governors' Association. Again, he was supported by both Democrats and Republicans.

In 1994, John Ashcroft was elected by the people of Missouri, this time to serve his State in the U.S. Senate. While serving in the Senate, Senator John Ashcroft was a member of the Judiciary Committee as well as chairman of the Judiciary Subcommittee on the Constitution. His record has shown a strong commitment to upholding the Constitution and the rule of law equally and fairly.

Throughout this grueling nomination process, Members on the other side of the aisle have questioned John Ashcroft and, in some cases, even accused him of allowing race to affect his decision on judicial nominees.

There is absolutely no evidence that backs up these absurd allegations.

Let me remind Members of this body that as a United States Senator John Ashcroft supported 26 of 28 African American Judicial nominees sent to the Senate for confirmation by the President.

As the Governor of Missouri, John Ashcroft nominated eight African American judges, including the first ever to the court of appeals in the state. He appointed three African American members to his cabinet while he was the chief executive of the state of Missouri. He supported and signed into law Missouri's Martin Luther King, Jr. holiday. He supported and signed the law that established Scott Joplin's house as the first and only historic site honoring an African American citizen. He led the fight to save independent Lincoln University, founded by African American soldiers.

He established an award, emphasizing academic excellence, in the name of George Washington Carver. I believe John Ashcroft wants equal opportunity extended to all.

Over the last few weeks we have heard from a number of people who have questioned the nomination of John Ashcroft. I would like to take a few moments to mention some of the groups who have endorsed the nominee for Attorney General:

National District Attorney's Association, Fraternal Order of Police, International Brotherhood of Police Officers, Law Enforcement Alliance of America, National Sheriffs Association, Missouri Police Chiefs of Police, National Victims Constitutional Amendment Network, Victims of Crime United, Citizens for Law and

Order, Justice for Homicide Victims, Justice for Murder Victims, National Organization of Parents of Murdered Children, National Association of Manufacturers, United States of Commerce, Associated Builders and Contractors, American Farm Bureau Federation, and the American Insurance Association.

I could go on and on and continue to name a total of some 263 groups that have voiced their support for John Ashcroft to be the next Attorney General.

John Ashcroft is clearly qualified for the job of U.S. Attorney General.

He understands what is expected of the office. During his hearings he summed up his duties in one statement:

My responsibility is to uphold the acts of the legislative branch of this government and I would do so and continue to do so in regard to the cases that now exist and further enactments of the Congress.

John Ashcroft is a man of unquestionably high character and morals who has the knowledge and experience to serve our Nation with justice and excellence as our Nation's next Attorney General.

Thank you Mr. President, I yield the floor.

Mr. HUTCHINSON. Mr. President, I want to take just 1 minute to say a word of commendation for my colleague, John Ashcroft. As the Judiciary Committee, at this very hour, prepares to meet for a vote on his confirmation, I say that this man of honor and integrity has gone through an unprecedented ordeal in his desire to serve this country as Attorney General.

I cannot imagine any person who comes to that position with greater qualifications or a greater sense of integrity. I do not believe my colleagues on either side of the aisle would question this man's commitment nor his faith. In fact, I suggest no one would argue but that he is the man of deepest faith in this body, and yet that very faith commitment has been turned on its head to make it an issue against his confirmation. I find that astounding and very disappointing.

The fact that people would ask, can John Ashcroft enforce the laws because of his religion and his faith—John had the best answer to it when he said before the Judiciary Committee: I will enforce the laws of this land because of my faith. As someone who shares much of the same faith as John Ashcroft, I can relate to and understand exactly what John is saying.

Though he may hold deep convictions—and he may or may not agree with all the laws of this land—it is because of his deep faith that he knows he must enforce the laws of this land—and will.

Who in this body would question his sincerity or his honesty? And as he stood before the Judiciary Committee, and sat before that Judiciary Committee, and took that oath to tell the

truth, and said he would enforce the laws of this land—whether he agreed with them or not—who would we be and which of my colleagues would dare question his sincerity or his honesty?

It was interesting to me, as you look back historically at how we have previously confirmed Democrat nominees for the Cabinet, overwhelming votes, without filibusters, and without delay, here is a quote about the nomination process worth repeating:

We must always take our advice and consent responsibilities seriously because they are among the most sacred. But, I think most senators will agree that the standard we apply in the case of executive branch appointments is not as stringent as that for judicial nominees. The president should get to pick his own team. Unless the nominee is incompetent or some other major ethical or investigative problem arises in the course of our carrying out our duties, then the president gets the benefit of the doubt.

That statement was made by Senator LEAHY. He laid down the right standard. He is right. The President should be able to pick his own team. I hope my colleagues recognize that and will support the confirmation of our distinguished colleague from Missouri, Senator John Ashcroft.

Mr. President, I thank you and yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Mr. President, I rise this evening to speak about the nomination of Senator John Ashcroft to serve as Attorney General. I want to be very clear. I did not seek this debate. I think it is unfortunate that this new Senate has to address such a difficult and contentious nomination that opens up old history and old wounds and old debates, rather than moving forward on issues that unite our country.

I do not relish the role of opposing a new President's nominee for Attorney General. In fact, quite to the contrary. I believe a new President should be able to fill his Cabinet with the people he wants. Unfortunately, this is not something over which I have control. President Bush picked Senator Ashcroft and in doing so he brought this conflict upon himself and he must accept responsibility for that decision.

Senator Ashcroft, too, must accept responsibility for his actions, especially those that have raised doubts about his ability to serve as Attorney General. I did not seek this conflict, but under the U.S. Constitution the Senate is called upon to provide advice and consent on Cabinet appointments, and I take that responsibility seriously.

I do want to point out that I and all of my colleagues took great care to treat John Ashcroft carefully. In fact,

throughout the debate over Senator John Ashcroft's nomination I have said that I would only make a decision after Senator Ashcroft had a full and fair hearing. That is what fairness requires.

Senator Ashcroft had an opportunity to respond to questions before the Senate Judiciary Committee. I reviewed the testimony thoroughly and then I reached my decision. I want to share with my colleagues and the people I represent how I reached the conclusion that Senator Ashcroft should not serve as Attorney General.

First, I considered the unique responsibility and trust placed in an Attorney General. Far more than any other Cabinet officer, the Attorney General of the United States has the power to affect the rights and the lives of all Americans. For that reason, this nominee must be chosen with great care.

I can tell you I spent many days and several long nights thinking about qualities I would want to see in an Attorney General. In addition to being honest and independent, that person must actively enforce the laws and ensure the public's confidence in our legal system. The Attorney General must also display the highest standards of fairness, trust, and respect for the law. I developed those standards and then I looked at Senator Ashcroft's statements in the RECORD.

As I have looked at the facts, it seems clear that, in his hearing, he obscured his record and did not prove to me that he is qualified to be Attorney General.

As I said, I have taken great care to ensure that John Ashcroft had a fair opportunity to respond to the questions raised about his nomination. Unfortunately, Senator Ashcroft did not extend that same standard of fairness to Judge Ronnie White, and fairness is one of the critical qualities needed in an Attorney General.

In the case of Ronnie White, Senator Ashcroft leveled serious charges against a respected jurist. Through Senator Ashcroft's timing and maneuvering, Judge White was never asked about those charges. Judge White was never even given an opportunity to defend himself, and that is fundamentally unfair.

In any Senator, such behavior is inappropriate and regrettable. In an Attorney General, such behavior can be dangerous.

Unfortunately, Ronnie White was not the only nominee that Senator Ashcroft, in his long tenure, has treated questionably. Senator Ashcroft's treatment of Ambassador James Hormel is also very troubling to me. At the time Senator Ashcroft said he opposed Mr. Hormel's selection to be Ambassador to Luxembourg because he actively promoted the gay lifestyle. More recently, however, we heard a different answer from John Ashcroft. He told the Senate Judiciary Committee that he voted against Mr. Hormel because he knew him personally. But Mr. Hormel has said that he never met Senator

Ashcroft, and, further, that Senator Ashcroft had refused to even meet with him. In fact, John Ashcroft would not even attend the nomination hearing in the Foreign Relations Committee of which he was a member. His treatment of Mr. Hormel, and his varying and contradicted claims about the reason for his decision, give me great pause.

It would be easy to give Senator Ashcroft the benefit of the doubt if this were an isolated incident, but in addition to Ronnie White and James Hormel, Senator Ashcroft also treated Bill Lann Lee unfairly. As my colleagues will recall, Bill Lann Lee was nominated to be head of the Justice Department Civil Rights Division. In opposing Lee, Ashcroft said Lee had an intensity that belongs to advocacy, not the balance that belongs to administration.

It seems to me that Senator Ashcroft would not even pass his own test. Senator Ashcroft's treatment of Judge White, Ambassador James Hormel, Bill Lann Lee, and others does not show the level of fairness that an Attorney General must display. This is not how the U.S. attorney general should treat people.

Let me turn to the second standard I considered—trust. The Attorney General must be someone the American people can trust to vigorously protect their rights.

Citizens of this country should feel comfortable that the highest law enforcement officer of the land will ensure their basic liberties. Unfortunately, for far too many Americans, Senator Ashcroft's record creates fear, not trust. His appointment sends the wrong message to Americans who already face discrimination and unfair treatment in their daily lives.

Next I want to turn to integrity because Senator Ashcroft is often said to be a man of integrity, and I do not challenge his integrity, but I do ask this: If he is true to his beliefs, how can he vigorously enforce the laws he has vehemently opposed and sought to overturn throughout his public service?

His past history shows he does not believe in and has fought against the laws that strengthen gun safety, protect a woman's right to choose, and civil rights. I can only assume that a man who prides himself on his integrity would continue to advocate those views.

John Ashcroft is a man of uncommonly strong beliefs. Based on what I know of Senator Ashcroft, he has not convinced me that he can set aside those beliefs to execute fully the laws with which he disagrees.

I also considered Senator Ashcroft's willingness to enforce the law, especially those with which he disagreed. Because we are a nation of laws, the Attorney General must actively enforce our laws. This is an area where Senator Ashcroft has an extensive record.

Unfortunately, as Missouri's attorney general, John Ashcroft was selective in his application of the law. Often

he acted outside the scope of his office. For example, Senator Ashcroft refused several court orders to implement desegregation of public schools in St. Louis. In fact, one judge said of Senator Ashcroft's efforts representing Missouri:

The State has, as a matter of deliberate policy, decided to defy the authority of this court.

The St. Louis desegregation case is the most troubling example of Senator Ashcroft's refusal to enforce the laws with which he disagreed.

Senator Ashcroft has also failed to convince me that he would actively enforce the laws that protect a woman's right to choose.

Finally, the Attorney General must be someone to whom all Americans can look as their advocate. President Bush has said he wants to unite our country, not divide it. This nomination, more than any I have ever seen, has divided our country and left many Americans wondering if their rights will be protected in the Bush administration.

I have received literally thousands of calls from a wide variety of citizens in my State asking me to oppose Senator Ashcroft's nomination, and they are not just saying oppose Ashcroft and hanging up. These are people who are telling me they have been following the debate and are really concerned that their rights will not be protected if John Ashcroft becomes Attorney General.

I want to say one more thing about the high level of public comment we have heard in recent weeks. Some claim that interest groups are to blame for John Ashcroft's problems. I disagree. No interest group made John Ashcroft mistreat Ronnie White or James Hormel or Bill Lann Lee. John Ashcroft did that himself, and he has to accept responsibility for his actions.

Those are the factors I considered: fairness, trust, ability to enforce the law, and ability to represent all Americans and to safeguard their rights.

I asked myself: Is John Ashcroft someone whom all Americans can trust to treat them fairly and to protect their rights? I have concluded he is not.

I will vote against John Ashcroft because he has not shown the fairness, the trust, or the respect of the law required in America's highest law enforcement officer.

Given the likelihood of his confirmation, I hope that John Ashcroft's actions in office will prove me wrong. Either way, I will hold President Bush accountable for his decision.

I thank the Chair, and I yield the floor.

**THE PRESIDING OFFICER** (Mr. VOINOVICH). The Senator from Alabama.

**Mr. SESSIONS.** Mr. President, President Bush's Cabinet nominees are the finest group of Cabinet nominees I believe we have seen in the last 100 years. They are extraordinary men and women of accomplishment and achieve-

ment. They are grownups. They are people who have a proven record of achievement, and I am proud of them.

John Ashcroft is a quality nominee. He is 59 years old. He served twice as attorney general of Missouri, twice as Governor, and he was elected to the Senate. He was five times elected to public office in the State of Missouri, a heartland State, a State that is always a bellwether for who will win the Presidency.

This is not a man who is an extremist. This is one of the finest, most decent men I have ever known. This is a man who tells the truth to a degree unusual in this Capital, and to have John Ashcroft accused of not telling the truth by the very same people who on this floor defended the former President of the United States, Bill Clinton, for bald-faced misrepresentations and lies he has finally admitted to making is stunning.

John Ashcroft is not that kind of person. John Ashcroft is a better person than that. He tells the truth. He does what is right. I have seen that aspect of his character exhibited time and time again on this floor. He is one of the most principled and decent Senators I have ever known.

As I told some friends of mine back home, I have not met a finer person in my church, in my State, or in Washington than John Ashcroft.

It is really disturbing to me to have Members of this body be encouraged and pushed by a group of hard-left activists to make statements that are demonstrably untrue. This is especially true when the people parroting these irresponsible statements were not present to observe the hearings that we had on this nomination. In fact, some who have announced their intentions to vote against John Ashcroft did not even wait for the Judiciary Committee hearings to begin before making their rush to judgment.

I am a member of the Judiciary Committee, and I was there when we had the hearings concerning this nomination. The committee gave everybody their say. We had representatives of Planned Parenthood, who oppose virtually any kind of control on abortion. We had representatives of the National Abortion Rights Action League as well. We also had a representative from Handgun Control who admitted to me that his organization never criticized the Clinton administration when they allowed prosecutions of gun crimes to drop 46 percent over the past eight years.

He never criticized the Clinton administration, not even one single time. Yet he has no problem launching attacks on Republicans who would not agree to support more and more regulation of innocent law-abiding citizens who want to possess guns. That is what the gun debate had become. Whatever bill you agree to pass, these groups want to put something more extreme out there so that it implicates the second amendment to a degree that is ar-

guably unconstitutional, thereby giving them ammunition with which to attack the person who will not vote for it.

They never criticized the Clinton administration for not prosecuting gun cases even though Attorney General Reno allowed prosecutions to plummet 46 percent over the past eight years. Why was this group silent? If their agenda is truly one of concern about the criminal misuse of firearms, why were they willing to turn a blind eye to the Democratic administrations lax enforcement efforts?

The truth is that many of these activist groups are fundamentally arms of the Democratic National Committee, and they are leaders of the hard left in America. They think they can come in and dictate to the President of the United States that he cannot appoint a decent, exceptionally skilled, and fine individual as Attorney General of the United States.

John Ashcroft went to Yale. He graduated from the University of Chicago Law School.

He is a scholar. I have heard him make speeches that are extraordinarily fine in their analytical thought. He follows his principles to a degree that I think is unsurpassed here. So it is really surprising to me to hear these complaints raised about him.

Let's talk about one matter his opponents keep raising. I would like to stand here all night debunking the myths that the far left has attempted to construct, but for the moment I am just going to talk about a couple of them tonight. The Ronnie White matter is one of the first myths that the hard left is perpetuating.

Let's look at the facts. John Ashcroft voted for every single African American judicial nominee who came up for a vote on this floor except Ronnie White—26 out of 27. Ronnie White was opposed not only from his home State of Missouri by John Ashcroft, he was also opposed by KIT BOND, the senior Senator from Missouri. Both of the home State Senators opposed this nominee. Was this some sort of an extremist position? I mean, confirmation is a fact and we need to deal with the cases that come before us.

John made a speech on this floor indicating his opposition to that nomination. He voted against it in committee. I think it came up in committee on two different occasions and on both occasions he voted against it and expressed his opposition to the nominee. But, to his credit, he did let the nominee come to the floor for a final vote. He agreed to allow that to happen.

So now he has been accused of intentionally mistreating Ronnie White because he allowed the full Senate to consider the nomination, rather than attempting to quietly defeat the nomination in committee. Let me tell you, if you hold a nominee in committee—and I suppose Senator BOND and Senator Ashcroft could have kept that nominee in committee—the left would

have been attacking him now for not letting the White nomination come to a vote. I am telling you, that is what he would be accused of. I have been here on the floor, and I have seen that.

John made a speech delineating some of the reasons—which I am going to mention in a moment—that he opposed him. And 54 of the 100 Senators in this body voted no.

How is that an extreme matter? Why would they vote no? There were several reasons. Out of the 114 sheriffs in Missouri, 77 of them wrote in opposition to the White nomination. Incidentally, many of these sheriffs are Democrats. Additionally, the Mercer County District Attorney wrote a letter to John Ashcroft stating:

Judge White's record is unmistakably anti-law enforcement, and we believe his nomination should be defeated. His rulings and dissenting opinions on capital cases and on fourth amendment issues should be disqualifying factors when considering his nomination.

You have heard another far left myth if you listened to the debate to date in that some opponents of John Ashcroft's nomination claim that John Ashcroft's members of the Supreme Court voted to dissent on criminal cases more frequently than Judge White. That is a very inaccurate statement. Let me tell you why. It is because apples are being compared to oranges. While the Ashcroft judge Mr. White replaced did vote against the imposition of the death penalty in a number of cases that Ashcroft nominee was voting on a series of cases that were not the same cases Judge White was ruling on when he was on the Supreme Court. He was ruling on a different group, with different facts and different legal questions involved. It is apples and oranges.

In order to place Judge White's death penalty dissents in proper perspective, it is necessary to compare Judge White's rulings to all the members of the court during the time Judge White sat on the court. When apples are compared to apples, it is clear that Judge White dissented four times more frequently than any other judge on that court.

That is a record that should be examined. That is a cause of concern. Some of Judge White's opinions that I have read cause me great concern because I was a Federal prosecutor for 15 years, and an attorney general for 2. I know some of the issues that come up with judges. I have spent by far the largest portion of my career in Federal court before Federal judges.

You have to understand something about Federal judges. They are appointed for life. They have absolute power in many instances in a trial, power that is unreviewable by any court. The most dramatic of these powers is the ability to grant a judgment of acquittal at the end of the prosecution's case.

For example, if you present a case against a defendant for murder, or

some other fraud or crime, and the prosecution stands up at the end of its case and says, "The prosecution rests," immediately now, these days, no matter what the evidence, the defense lawyer will stand up and make a motion for a judgment of acquittal.

Usually they are denied. Usually these motions are just hot air. They are just saying stuff for the record, frankly. Most prosecutors bring good, strong cases. So defense attorneys as a matter of routine move for a judgment of acquittal. If the judge grants that judgment of acquittal, it is the same as if a jury had acquitted that defendant. Jeopardy attaches. Under the Constitution of the United States, you cannot twice be held in jeopardy under the law. That defendant is acquitted, and he can never be tried again, no matter how guilty he or she may have been of the offenses charged.

So a Federal judge with a lifetime appointment in many ways is much more problematic for the system than one member of a seven-member supreme court. John Ashcroft, as a former State attorney general, understood that.

Federal judges also routinely overrule the entire criminal justice system of a State. You may say that is not routine. I suggest to you it is very frequent, and they are often asked to do so.

For example, if a case is appealed all the way to the Missouri Supreme Court, and the Missouri Supreme Court rules, then the defendant can file post-conviction relief in Federal court and ask the Federal court to review the State case to see if the Federal Constitution has been implicated and violated in some way that the defendant was tried.

So if you have a Federal judge on the bench who wants to let criminals go or is undisciplined in the responsibilities of his office in applying the law, or has demonstrated a bias against law enforcement officers, you can have a real problem.

In Alabama, people knew who the judges were who were always letting criminals go. It was not a secret. I am telling you, if you have a nominee come up from my State for a lifetime Federal judgeship, I am going to ensure—because I was an attorney general also—that they are going to give law enforcement a fair day in court, too. They are going to give the prosecutor a fair chance to put on his or her case.

That is the way John Ashcroft felt about it. So imagine his concern when he realized that he had prosecutors in his State opposing the White nomination. He had a majority of the sheriffs in his state oppose this judge. He even received written opposition from national law enforcement organizations, such as the National Sheriffs Association, that wrote in and opposed this judicial nomination.

So, keeping these facts in mind, John looked at the record, and thoroughly examined a number of the opinions

Judge White had issued which concerned these groups. And what he discovered, as he expressed in his floor speech at the time of the vote, is that Judge White had made a series of "procriminal rulings". The far left analyzes this as some sort of unwarranted attack upon Judge White's character, but it was not. It was simply a description of the opinions involved.

This is clear if one bothers to read the statement John made here on this floor. He was referring to his opinions. You can call them liberal opinions; you can call them bleeding heart opinions; you can call them anti-law-enforcement opinions. You can call them whatever you want to characterize them. But it is not disqualifying, in my opinion, to be Attorney General if you refer to a justice's opinions as procriminal when they continually rule in favor of criminal defendants.

One of the cases that caused the greatest disturbance was the Johnson case. In this case the defendant, Mr. Johnson, was involved in a domestic disturbance. The call went out to the sheriff's department. As so often happens, sheriff's deputies go out to those houses in response to a domestic call. These missions are considered to be perhaps the most risky and dangerous thing they do. In this case a deputy knocked on the door, and Johnson appears with a gun. As the deputy tried to get away, Johnson shot him in the back. The deputy fell to the ground, and Johnson walks over and puts a bullet through his forehead, execution style.

That is not enough to satisfy Johnson's blood lust, however. What does he do next? After murdering, in cold blood, a deputy doing his duty, Johnson goes out and tries to track down the sheriff. The sheriff isn't home. But the sheriff's wife is in the home, having a social gathering there—and with her own children about—and he shoots the wife five times through the window, killing her.

Then Johnson continues his rampage by tracking down two other deputy sheriffs and killing them.

This is one of the most horrible crimes I have seen.

At his trial, Johnson's defense lawyers suggest that because he served in Vietnam, the murders were the result of posttraumatic stress syndrome. The trial had all kinds of expert testimony and things of that nature to deal with this issue.

The defendant was caught, surrounded in a building, and surrendered. He made a detailed confession. I would say, as a prosecutor, it was a powerful demonstration of guilt beyond virtually any doubt that this defendant committed this crime.

The defense tried to say this guy thought he was in Vietnam. These were good defense lawyers, they had been award-winning criminal defense lawyers. All of them were highly skilled. So, on behalf of their client they claimed he had posttraumatic stress

syndrome. In light of the overwhelming evidence what else could they do? The murders were plain and simple. During the course of the trial, these lawyers made some representations that were not factually accurate, but which were not sufficiently egregious for the majority of the Missouri Supreme Court to find any error in their actions.

But Judge White felt differently. He concluded that the defense attorneys were incompetent, and that Johnson didn't get a fair trial. He also suggested that he wanted to apply an insanity theory that was different from established Missouri law. In fact, what White said was that if Johnson didn't meet the legal definition of insanity, he had something "akin to madness."

Two of the most significant criminal justice issues in America are the question of insanity and incompetent counsel. That is true because so many cases in our criminal justice system are like this case—the guilt is clear and overwhelming. So when they go and appoint a paid State attorney, a court-appointed attorney—by the way, in this case these attorneys were retained counsel, hired by this defendant or his family; he hired them; he wanted good attorneys—normally, the appeal goes forward dutifully after conviction because that is what a lawyer is expected to do. The State will pay for it. So they make an appeal and raise these issues on appeal.

When the guilt is overwhelming and the defendant did something violent such as this, what are the two issues you can raise? Ineffective assistance of counsel and insanity. And in this one opinion, Judge White showed clearly that he lacked judicial discipline. He lacked a comprehensive and clear understanding of the importance of a judge maintaining clear rules on insanity and incompetence of counsel. His dissent, if applied, would have completely destabilized the law in both of those areas for the State of Missouri.

Another big factor in cases is, even if the lawyer made a mistake and could in one sense be held to be incompetent, the judge must ask himself, on appeal, would that have had any likelihood of changing the outcome of the case. Certainly it would not have in this case, as the majority opinion clearly held.

There were a series of other cases such as this one that caused the former attorney general of the State of Missouri to wrestle with his conscience about whether or not he could approve this judge. He concluded he could not, that he ought to oppose him. By giving him a lifetime-appointed Federal judicial position, the danger would be great, and he should not be promoted with this kind of anti-law-enforcement record. So he made a statement to that effect on the floor, and 54 Senators agreed with him.

That is not disqualifying. That shows to me a man of courage, because he knew it would be a difficult matter, that many would disagree with him and he would probably be attacked. It

showed the kind of courage that prosecutors have to have. It is not always a pleasant task to take on these cases. You have to do your duty, and John did in this case.

He did the right thing. Judge White's opinions are, in my opinion, outside the mainstream, and he should not have been confirmed—54 Senators agreed with this conclusion.

The far left has also made allegations about the Bill Lann Lee nomination, and they have been attacking Senator Ashcroft for his small role—they don't say small role—in the Bill Lann Lee matter.

Bill Lann Lee was nominated by the President for chief of the Civil Rights Division of the Department of Justice. He had been a career civil rights attorney, a good one, who had filed lawsuits all over the country. That had been his goal throughout life. He came at the office from that perspective.

That is not disqualifying. As a matter of fact, it could be a good quality. In fact, I consider it a good quality that he had litigated and had been active in the areas of law which he would be called upon to enforce.

Many of his cases, however, had obtained rulings or forced agencies he was suing into consent decrees that went beyond what I believe is justified under current Supreme Court law. In fact, in recent years the U.S. Supreme Court rendered an opinion called the Adarand opinion. It was a very important case. It clarified in many ways the issue concerning quotas and affirmative action programs in terms of what is legitimate and what is not. Basically, the Supreme Court held that the Government can't have quotas. It cannot say that you get this contract for highway work because of the color of your skin and you don't get it because of the color of your skin. The Government can have affirmative action programs; it can have action to encourage small businesses. It can do a lot of different things to encourage minorities to have the opportunity to compete. But it cannot, as a matter of American law and fundamental justice, say to one group or another: You can't get this contract because of the color of your skin.

We had a hearing on that in the Judiciary Committee. We had Mrs. Adarand, the wife of Mr. Adarand, testify how their business had been damaged by a quota system in Federal highway funding. She described that in some detail.

We had a lady, a Chinese American from San Francisco, who testified about her daughter who had studied very hard to get into a special advanced quality school in San Francisco for math and science, I believe. She met the test scores, and they were so excited. Then she got a letter saying they were not accepted.

This woman went down to the school's office and said: My daughter made this test score. I thought she would be accepted. Why wasn't she?

She said the man to whom she was speaking looked at her and said: She was rejected because there are too many Chinese enrolled already.

Even though her child qualified in every way, she was rejected because of her ethnic, racial background.

That is the kind of thing that is happening in America today. It is not a healthy thing. Adarand made clear that those kinds of things are not justified. Adarand holds that there is a presumption in the law that programs based on race, that favor one group or another based on their race, are unconstitutional and that they fail and cannot be enforced unless they pass a strict scrutiny test, which is a very high test.

Isn't that true? Isn't that what America is about? Equal opportunity for all, regardless of their race and background, color or creed or religion? Yes, that is what America is about. So this is a seminal case.

So Mr. Lee came up. It became a really important question as to whether or not he would follow this because his background, particularly in a lot of cases before Adarand was ruled on, was contrary to that. He said he thought Adarand was fine, he would follow it. But we questioned him in some detail about how he interpreted Adarand, and that was a matter that did not go well for Mr. Lee, in my opinion. It troubled the entire committee.

The precise questions dealt with the enforcement of Adarand. When asked to state the holding of Adarand—we asked him what he thought the holding of Adarand was—he testified that racial preference programs are permissible "if conducted in a limited and measured manner." Racial preferences are permissible in America, he said, if conducted in a limited and measured manner.

But Adarand doesn't say that. That was the problem. Adarand says they are presumptively unconstitutional unless they pass strict scrutiny, some specific reason—normally, a clear bias that is being fixed by a post-adjudication order. But even when this was pointed out to Mr. Lee, he stayed with his expressed position. That was very troubling.

I liked Mr. Lee. I told him I liked him. But I was troubled that he was going to be chief of the Civil Rights Division in the Department of Justice, and he wasn't prepared to enforce plain rule, as I saw it, in the Adarand case.

Chairman HATCH, who is a constitutional scholar, was also troubled. He came and made a speech on this floor which had the quality of a Law Review article dissecting this important seminal case and Mr. Lee's responses to it. He voted no, the chairman of the Judiciary Committee, as did eight other members of the Judiciary Committee, of which I was a member. He failed in committee 9-9.

They blamed John Ashcroft as being a man who personally blocked this person from that high office. I don't think

that is right. I think that is wrong. That is deliberate distortion of what happened. Members of the committee who were there ought to have known better than to criticize John Ashcroft with regards to the Bill Lann Lee nomination. They should not repeat a false allegation, and they should correct their colleagues who may not know otherwise.

It was an honest, professional discussion of the law. It was an honest discussion of what ought to be done for Bill Lann Lee, and we concluded that his understanding of Adarand was different than what we understood Adarand to be and that he could not fulfill the very heart of his office's responsibility if he didn't understand the seminal case on preferences and quotas in America law, the Adarand case.

There are hundreds of Federal programs based on race in America. When asked if any of them would fall because of Adarand, Lee suggested maybe one. I think that is unlikely to be so as the law continues to develop in this area. I think we had a real problem there. That is why that matter was decided the way it was.

It certainly is unfair to say that this brilliant lawyer, this principled Senator, this public servant of over 25 years was somehow anti-Chinese-Americans because he voted against Bill Lann Lee. He voted for 26 out of 27 African American judges that the Clinton administration sent forward, objecting only to the one in his State where his sheriffs and police chiefs opposed him. Does that mean that he is anti-black? They are wrong. This is going too far. What is happening here is not right.

I was talking to a group, and I acknowledged that John was different from the rest of us. He doesn't drink, dance or smoke because of his dedication to his religious beliefs. He has been married to one wife, and he has a fine family. His personal life is conducted on the highest standard of decency and fairness. In many important ways, John Ashcroft is different from the rest of us. In many important ways, John Ashcroft is better than the rest of us.

He has appointed numerous African Americans to the bench in Missouri. He signed into law and supported the Martin Luther King birthday law in Missouri at a time when some didn't want to do that. His wife, a law professor herself, is teaching at the Howard University, a majority black college here in D.C. John has a clear record of fairness and justice.

It is wrong to allow a series of groups that are not answerable to the American people, that have hard-left agendas, to come in here and caricature his decisions as being somehow anti-civil rights because he voted against Bill Lann Lee; that he is somehow anti-black because he voted against this one judge. To make that kind of caricature of this good man and then ask us to vote against him based on that caricature is fundamentally wrong.

If you had heard the testimony and heard him answer and explain how he did this and other things in the hearing, you would agree, I believe, that he made a wonderful case for what he did. It was plausible and reasonable and principled and is not in any way extreme or outside the mainstream of American law.

Another far left myth is that John is against integration because he resisted massive Federal Court intervention in the State of Missouri's school systems.

Many of you have probably heard of the Kansas City case where a Federal judge imposed a tax and ordered a county commission to impose a tax to pay for the court's plan for education. John was the attorney general of the State of Missouri, the sovereign State of Missouri, that has a constitution that says what State school boards do, what State superintendents of education do, and how the system is set up. This Federal judge came in and ripped it all apart doing what he thought was just.

I am telling you, if the attorney general wants to defend his State, what is the matter with that? Who is in charge? Is he supposed to stand idly by and allow the court to do that?

Senator Danforth, one of the most respected Senators who has served in this body, is an Episcopal priest, and was attorney general before John. He opposed these court orders. His successor opposed these orders. The second successor to John Ashcroft, Jay Nixon—I was attorney general, and I knew Jay. Jay opposed those orders exceedingly vigorously. But that didn't stop a few of the Members of this body, Senators KENNEDY and HARKIN, from going to Missouri and having a fundraiser for Jay Nixon in his race for the Senate.

Let me repeat that. Senators KENNEDY and HARKIN held a political fundraiser for Jay Nixon after he opposed these court orders vigorously, yet somehow it was improper for then Attorney General Ashcroft to have opposed them as well.

This example is illustrative. Like the integration charge, all the charges made against John are trumped up. This is not fair. John Ashcroft was doing his duty as an attorney general. He favored school integration, and he has stated that unequivocally. He believes in integration, but he did not agree with the actions taken by the federal courts.

This is what was in one of the court orders that John Ashcroft resisted as attorney general of Missouri. It ordered the school system to have an 8-lane, 50-meter swimming pool, the biggest in the State, bigger than any of the universities' swimming pools; a 300-seat Greek amphitheater with a stage framed with white columns; a planetarium; greenhouses; a dust-free diesel mechanic shop—I worked in my dad's mechanic shop. It wasn't dust free. It didn't hurt me, I don't think—broadcast cable radio and TV studios; school animal rooms, including an indoor pet-

ting zoo; private nature trails; overseas trips for students; and a model United Nations with language translation.

The attorney general is supposed to sit by and let a Federal judge take over the whole State and issue these kinds of orders? Who is going to pay this \$1.7 billion? The people of Missouri.

Who is this judge? How do judges get to do this? They have to be careful about this. You can't issue orders to remedy a past discrimination. You can't do that, but judges do it regularly. But many judges over reach. Many court rulings have over reached.

As attorney general, John Ashcroft thought it was his duty to defend Missouri as his predecessor and as his two successors did. That is not an extreme position.

This is second-guessing somebody and twisting it to make it sound as if he opposed integration, which he absolutely did not.

There are many more matters that have been charged. The responses to them are just as compelling. In fact, it is clear to me that the case against John Ashcroft totally collapsed in the hearings that we held. We gave everybody a chance to testify. John responded to all of them. He answered 400 questions propounded to him.

There is no case here that shows that he wouldn't be the finest kind of Attorney General. I am convinced that he will. I am convinced that he will be a great Attorney General.

As one who spent 15 years in the Department of Justice, I dearly love and I respect it from my deepest being. It has not been run well in the last 8 years. It really has not. Morale is not where it needs to be. They have not pursued cases effectively, in my view. For long, long periods of time, chief positions such as Criminal Division Chief have been left vacant. There has not been a focus and a leadership there, and it is desperately needed. More than anybody I know, John Ashcroft can fill that role with integrity, with fairness, and with justice to restore the concept of equal justice under the law, even if it means denying pardons to millionaire fugitives who won't come back to face the medicine.

He would never have approved a pardon for that kind of case. That kind of stuff is rotten to the core. The same people in this body who have defended, excused, and apologized for lies, for unprincipled operation of the Department of Justice, or for former President Clinton's subversion of the law, now see fit to attack a man of character and decency. This is tragic, and it speaks volumes about John's opponents.

He is going to be confirmed, because my colleagues know the truth about John Ashcroft. He will be a good Attorney General. Members of this Senate in opposition to this nomination ought to reevaluate their conscience about how they have handled this case. I yield the floor.



The PRESIDING OFFICER. The Senator from Arkansas.

#### ELIMINATING FEDERAL BARRIERS

Mr. HUTCHINSON. Mr. President, I rise to enthusiastically applaud George W. Bush's community and faith-based initiative which he announced yesterday and is emphasizing and talking about this week. It is a very exciting prospect that we have a President who recognizes the vast untapped potential of the charitable and faith-based sector and who wants to rally what he calls the "armies of compassion" to solve the deeper social problems and the deeper social challenges we face in this Nation.

The government can do many things. Some of those things it does well, but there are many things government cannot do. It cannot put hope in our hearts or a sense of purpose in our lives. This is done by churches, synagogues, mosques, and charities that warm the cold of life. It is done by the faith-based sector in our society.

I am pleased the President has established the Office of Faith-Based and Community Initiatives. By creating this office, we now will have a clearinghouse in the executive branch to point up where we have legislative and administrative barriers that have been erected to make it more difficult for people to encourage and support these faith-based initiatives. It will identify such problems in Federal rules, practices, and regulatory and statutory barriers in order that we might find relief and coordinate new Federal initiatives to empower and partner with faith-based and community problem solvers.

As he rolled out this plan—some of it, I am sure, is going to be controversial, and that is where the media would like to focus—much of what the President has rolled out makes common sense if we go beyond welfare reform, passed a few years ago and signed by President Clinton. Welfare reform has had a dramatic impact. We have seen the welfare roles decline by half across the Nation. All of us involved in the effort understood that was but the first step, and if we were ultimately to get to the deeper problems in a welfare culture, if we were going to deal with the problems of drug dependency, if we were going to deal with the high rate of recidivism in our prisons that we had to embrace, we had to involve the faith-based sector.

The President has suggested we should expand private giving, we should grant a charitable deduction for nonitemizers. The Federal charitable deduction, under the President's plan, will be expanded to 80 million taxpayers. Seventy percent of all filers do not itemize, and thus currently cannot claim this benefit. This initiative will spark billions of dollars in new donations to charitable organizations. He has suggested that we should promote corporate in-kind donations. The ad-

ministration seeks to limit the liability of corporations that in good faith donate equipment, facilities, vehicles, or aircraft to charitable organizations, thus enhancing the ability of these organizations to serve neighborhoods and families. That, I say to my colleagues, is common sense. It should not be controversial. He suggested that we permit charitable contributions from IRAs without penalty. Under current law, withdrawals from IRAs are subject to income tax. This creates a disincentive for retirees to contribute some or all of their IRA funds to charity.

President Bush supports legislation that would permit individuals, over the age of 59, to contribute IRA funds to charities without having to pay income tax on their gifts. He promotes a charitable State tax credit. He supports raising the cap on corporate charitable deductions and creating a compassion capital fund.

All of these are a simple means in which we can use the Tax Code to encourage donations to the faith-based and charitable sector and unleash this vast source of energy to help solve these very deep-rooted problems that we have in our society.

Among the new approaches, he suggests action that would help the children of prisoners, improving inmate rehabilitation, providing second chance maternity group homes, and more afterschool opportunities.

I want to tell one such story from the State of Arkansas that I believe the President's initiatives will assist. We had a wonderful organization started in Little Rock, AR, called PARK. It stands for Positive Atmosphere Reaches Kids. It was established by someone whose name will be familiar to football fans across this country. It was established by Keith Jackson. Keith was raised in a single parent household in a low-income neighborhood of Little Rock. He held steadfast to his course of finishing high school, playing football, and ultimately graduating from college. Unfortunately for us, he played football for the University of Oklahoma. But he went on to the NFL where he had a stellar career. He returned to Little Rock with this burden to help underprivileged children in Little Rock.

This is what he said in 1989. He said, while watching an evening newscast, he was struck by the number of stories involving teenagers and violent crime. He said: It seemed like every story was about a kid getting shot or robbing a liquor store or being in a gang fight. It really hit me for the first time that somebody had to do something to stop this. What we are doing now isn't working.

He said the Government programs, as many and as well motivated as they were, were not doing the job. He established PARK. It is a wonderful program. It is an afterschool program. From September through May, the program operates 4 days a week. Kids ride schoolbuses to PARK. When they ar-

rive, they eat a nutritious snack. They participate in the required academic program which requires homework, tutoring, reading or research in the library, working in the computer lab that is equipped with software designed to enhance skills in reading, math, and language arts.

Volunteer tutors and mentors come in. After they spend the hour doing the academics, they then get to enjoy the recreation. They have a skating rink, a weight room, basketball courts, racquetball courts, and an arcade. Some kids may go so they can be involved in the recreation, but they first have to do the academic work. They have a summer program. They have a community service program. They emphasize parental involvement.

When school is over, the buses take the kids to PARK, where they enjoy an extra hour of academic emphasis. Then they have the recreation. They have a nutritious snack. They have parental involvement. They have mentors and tutors. And they have a college prep program. All of this is done without one red cent of Government money. It is all from donations. It is all from foundations; not any Government assistance.

Why shouldn't we make it easier for people who believe in programs such as PARK to be able to give and contribute and have a tax incentive to do that? I simply applaud President Bush for seeing this need and for stepping forward and being willing to take some of the barbed attacks he has faced, and will continue to face, for this initiative because it is sorely needed.

I want to tell one more example. Here in Washington, DC, a group of Hill staffers, a few years ago, saw the need of children in disadvantaged homes in the District of Columbia, where many of them did not have the same educational opportunities as children from more affluent homes. They went out and they started a school called Cornerstone. They started it on a shoestring. They had no great resources. They had no great endowment. They had no great foundation. All they had was a vision and a dream. They are Hill staffers. They have started a school that is now serving scores of young people here in the District of Columbia. While we may argue about vouchers, we surely should not argue about making it easier for people to support faith-based initiatives such as Cornerstone.

#### DEMOCRATIC COMMITTEE MEMBERS

Mr. DASCHLE. Mr. President, the following is our completed list of Democratic members of the Energy Committee: Senators BINGAMAN, AKAKA, DORGAN, GRAHAM, WYDEN, JOHNSON, LANDRIEU, BAYH, FEINSTEIN, SCHUMER, and CANTWELL.