

his Government for 97 days, not given the right to an attorney, not given the right to contact anybody on the outside at any time during the early stages of that confinement. That is unbelievable.

Bunnatine Greenhouse testified once again this morning, the highest ranking civilian official in the U.S. Army Corps of Engineers. She said the abuse related to the awarding of contracts—here is what she said exactly. This is the highest ranking civilian official in the U.S. Army Corps of Engineers.

I can unequivocally state that the abuse related to the contracts awarded to KBR—

that is a subsidiary of Halliburton—represents the most blatant and improper contract abuse I have witnessed during the course of my professional career.

Do you know what happened to this woman for that? She lost her job. That is unbelievable, when you think about it. I talked to Secretary Rumsfeld about this case. I talked to Secretary Gates about this case. I talked to Deputy Secretary England about this case—nothing. Oh, we are all looking at it, we are all investigating. They have been doing that for 2 years.

I called the commanding officer of the Army Corps of Engineers when Bunnatine Greenhouse was given this job. This is a woman with three master's degrees, judged by everyone from outside the Government who deals with contractors as outstanding, given outstanding references on her performance reviews all along, until somehow she got into a situation where she said: I saw things going on with sole-source contracting, awarding big contracts, billions of dollars of contracts and doing it improperly, abusively. "I blew the whistle," she said, and all of a sudden she got into trouble and they demoted her.

I called her former commanding officer, General Ballard, now retired. I called him at home one night and I said: Tell me about Bunnatine Greenhouse, because she has paid for her courage to speak out with her career. Here is what her boss said: "She did an outstanding job." This is an outstanding employee. But because she had the courage as a whistleblower to stand up and report things that were wrong, abusive behavior, behavior that abuses the American taxpayer, she paid for it with her job.

We can't let that continue to happen. That is why I held this hearing. The best disinfectant for bad behavior is sunlight, and I hope, as we continue to expose more and more of this, I hope we can put an end to it. Those who have the courage to come forward and report wrongdoing, to report waste and fraud and graft and corruption—in my judgment, we ought to thank them. There is a story, I don't have a copy of it here, a story in the USA Today newspaper, written by an investigative reporter, that deals with these issues, the issues of oversight of contractors and the oversight of contracts that are let with respect to the war in Iraq. What

we have found—Senator WYDEN and I have worked on this in the Senate—the Pentagon wants to hire companies to oversee other companies. You can't do that. You can't delegate that responsibility. Who is looking out for the taxpayer here?

We had testimony today from Robert Isackson. Robert Isackson is a patriotic American. He was someone who saw criminal activity with a company called Custer Battles. He reported it. For that, he and others who were with him were surrounded by people with guns, threatened. He came today and expressed profound disappointment at the way the Federal Government has responded or failed to respond. As a person who had the courage to be a whistleblower, who saw something wrong and decided to try to right it, as a person who stood up for the best interests of this country and its taxpayers, we owe him a debt of gratitude.

And yet we see today that what has happened, systematically—the Associated Press wrote a big article about this, exposing it. What has happened systematically under this administration to whistleblowers is they are abused, not protected; not thanked, but abused. I would hope whoever in this administration is responsible and listening and understanding might decide that has to stop.

I will speak more at some point soon about the results of this hearing. My colleague Senator GRASSLEY from Iowa I know has spent a lot of time on whistleblower issues, and other colleagues have as well. It is very important for us that when people come forward to report acts of wrongdoing, fraud, waste, abuse, that this country says thank you and follows up and will not allow those people to be abused and penalized. Yet, all too often, that has not been the case. It has to change.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Utah.

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

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

Mr. HATCH. Mr. President, I ask unanimous consent that I be permitted to speak, and then the Senator from Alaska, Ms. MURKOWSKI, be able to speak.

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

NOMINATIONS

Mr. HATCH. Mr. President, I want to address my colleagues for just a few minutes on the subject of nominations to the Department of Justice and to the Federal judiciary.

Our obligation is the same for each, to focus on the qualifications of nomi-

nees through a process that respects the separation of powers.

First, let me say that the President has made a first-rate nomination by choosing Judge Michael Mukasey as the next Attorney General of the United States. He will bring to this vital leadership post 16 years of private legal practice, 4 years as a Federal prosecutor, and 19 years as a Federal judge.

He headed the Official Corruption Unit during his service as Assistant U.S. Attorney in the Southern District of New York. And he served as Chief Judge during his last 6 years on the U.S. District Court for the Southern District of New York.

By any reasonable or objective measure, Judge Mukasey is clearly qualified to lead the Justice Department.

I want also to draw attention to an aspect of Judge Mukasey's experience and record that makes him particularly qualified to lead the Justice Department at this challenging time in our history.

The U.S. District Court is divided into 94 geographical districts. These districts' caseloads vary widely, reflecting the characteristics, demographics, and realities in those districts.

The Southern District of New York, where Judge Mukasey served for 19 years and which he led for 6 years, is no different.

Serving in that key judicial district led Judge Mukasey to confront the terrorist threat to America long before the 9/11 attacks. He presided over the prosecution of Omar Abdel Rahman and sentenced him to life in prison for his role in the 1993 plot to blow up the World Trade Center.

When the U.S. Court of Appeals for the Second Circuit affirmed Judge Mukasey's decision, it took the unusual step of commenting specifically on how he had handled the trial. The appeals court said Judge Mukasey "presided with extraordinary skill and patience, assuring fairness to the prosecution and to each defendant and helpfulness to the jury. His was an outstanding achievement in the face of challenges far beyond those normally endured by a trial judge."

That is a remarkable statement. Appeals courts review lower court decisions, but very rarely do they comment in this manner on lower court judges.

That case occurred before the 9/11 terrorist attacks.

Ten years later, after those attacks, Judge Mukasey ruled that the President had authority to designate Jose Padilla as an enemy combatant against the United States and that, even as an enemy combatant, he must have access to his lawyers. Padilla was eventually convicted of providing material assistance to terrorists.

Legal analyst Benjamin Wittes wrote about this case in the journal *Policy Review* and said that Judge Mukasey's decision was "the single most compelling judicial opinion yet written on the

due process rights of citizens held as enemy combatants." That is high praise indeed.

This background and experience with national security and terrorism cases make Judge Mukasey especially qualified to lead the Department of Justice at this time in America's history.

The Justice Department is being retooled and redirected in light of the war on terror, including creation of its new National Security Division.

Many of the issues in this area may begin with legislation, but end up in the courts. Having someone at the helm with experience not only as a prosecutor but as a judge evaluating these very issues will be invaluable.

In addition to these qualifications are important personal and character qualities which I believe we need in our leaders.

A Federal judge's law clerks probably know better than anyone how the judge thinks, how he approaches the law, how he handles tough issues, and how he treats others.

I ask unanimous consent to have printed in the RECORD a letter signed by 43 of Judge Mukasey's former law clerks.

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

(See exhibit 1.)

Mr. HATCH. This letter describes his decisiveness and mastery of the law, as well as his fairness, humility, and commitment to public service.

We must evaluate Judge Mukasey's qualifications and character through a process that respects the separation of powers.

The Constitution gives the President authority to appoint members of his Cabinet, including the Attorney General. While the Senate has a role in checking that authority, ours is not a coequal role with the President, and we may not use our confirmation role to undermine the President's appointment authority.

Some of my colleagues may want to use these nominations to fight policy or political battles. Those fights are for the legislative process or the oversight process, but not the confirmation process.

Some of my colleagues have even hinted that they may manipulate the confirmation process for Judge Mukasey in an attempt to force compliance by the Bush administration with certain demands on other issues.

That kind of political extortion would be wrong.

The Justice Department needs leadership now, and Judge Michael Mukasey is qualified and ready for duty now.

During my 31 years in this body, we have taken an average of 3 weeks to move an Attorney General nominee from nomination to confirmation. There is no reason we cannot meet that standard with the excellent and well-qualified nominee now before us.

The same two obligations apply to nominations to the Federal bench.

Let me repeat, we must focus on a nominee's qualifications through a process that respects the separation of powers.

It is a curious fact of recent American history that, like the situation today, the last three Presidents each faced a Senate controlled by the other political party during his last 2 years in office. Two of those presidents were Republicans, one was a Democrat.

During those last 2 years of a President's tenure, the Senate confirmed an average of 91 judges, 74 to the U.S. District Court and 17 to the U.S. Court of Appeals.

This is only one way of measuring confirmation progress, and I realize some may not care a bit about what has happened in the past. But for those who do, I simply offer this as a yardstick, a gauge of the progress we are making today.

The last 2 years of those previous Presidents' tenures are an obviously parallel measure for us today, since we are in the last 2 years of President Bush's tenure.

We are nearing the end of September and have confirmed just three judges this year to the U.S. Court of Appeals. The last one was nearly 5 months ago.

At the same point in this same year during those last three administrations, the Senate had confirmed an average of six appeals court nominees, twice as many.

Meanwhile, the vacancy rate on the U.S. Court of Appeals continues to rise, and is nearly 10 percent higher than when President Bush was reelected.

By raising this issue, I run the risk of some talking about what they like to call pocket filibusters of Clinton nominees. This cute but profoundly misleading phrase is intended to suggest that the Republican Senate blocked Clinton judicial nominees, the number they use varies all the time, who all could have been confirmed.

I will say just two things about this well-worn mantra.

First, a certain number of nominees of every President remain unconfirmed for a variety of reasons. Anyone who pretends otherwise is trying to mislead the American people about how the confirmation process actually works.

Some Clinton nominees were withdrawn, others were opposed by home-State Senators, others were nominated too late to be evaluated. Honestly taking these and other factors into account shows that the margin of error by these critics tops an astonishing 400 percent.

The second response is simpler. President Clinton appointed 377 Federal judges with a Senate controlled by the other party for 6 of his 8 years in office.

This is second only to President Reagan's 383 judicial appointees with a Senate controlled by his own party for 6 of his 8 years in office.

We need to make more progress confirming judicial nominees. The needs of the judiciary and the yardstick of his-

tory indicate that we are not doing our duty.

President Bush has the lowest judicial confirmation rate, overall, and for appeals court judges in particular, of any President during my three decades in this body.

Instead of making the confirmation progress that we should, we see a series of steadily changing standards, whatever it takes to defeat the nominations of good men and women.

I have spoken here on the floor several times about the attack on Judge Leslie Southwick, nominated to the U.S. Court of Appeals for the Fifth Circuit.

Opponents urge his defeat on the basis of just two of the 7,000 cases in which he participated, on the basis of two concurring opinions he did not write—not because he applied the law incorrectly, but because the opponents do not like the result of him applying the law correctly.

That standard is wrong and I hope it does not succeed.

I have here the Washington Post editorial from last month and I agree with its title. Judge Southwick is indeed qualified to serve.

The editorial says that while the Post does not like the results in the two cases that opponents highlight, they cannot find fault with Judge Southwick's legitimate interpretation of the law.

Judges are not supposed to deliver results that please this or that political constituency. Judges are supposed to correctly interpret and apply the law.

Judge Southwick is committed to that judicial role and he should be confirmed.

Now we see an attack on another nominee to the same court, Judge Jennifer Elrod.

When the Judiciary Committee reported her nomination to the floor yesterday, one of my Democratic colleagues questioned her qualifications for the position.

Judge Elrod, who currently serves on the State court trial bench in Texas, graduated cum laude from Harvard Law School and joined the State trial court bench after 8 years of private practice. For a dozen years, she served on the board and eventually chaired the Gulf Coast Legal Foundation, one of the largest legal aid organizations helping the poor in southeastern Texas.

Judge Elrod has as much judicial experience as did Sandra Day O'Connor when she was unanimously confirmed to the Supreme Court of United States. In fact, when you include Judge Elrod's 2 years clerking for U.S. District Judge Sim Lake, Judge Elrod has more judicial experience, and more Federal court experience, than did Justice O'Connor.

I voted for Justice O'Connor, I certainly believed she was qualified for the Supreme Court, and I know that Judge Elrod is qualified for the Fifth Circuit.

But Democratic colleagues in the Judiciary Committee also questioned

Judge Elrod's fitness for the Fifth Circuit because of her race. One colleague said that we must consider the race of sitting judges as well as judicial nominees as we proceed through the confirmation process.

The implications of this view are troubling, to say the least. This means that no matter what a nominee's qualifications, no matter what her experience or background, no matter what she would bring to the bench, a nominee's race can, and some apparently believe even should, trump her merit.

Appointing judges based on race is an inappropriate standard that I cannot accept.

Like Judge Southwick, Judge Elrod has been nominated to a vacancy open so long that the Administrative Office of the U.S. Courts has designated it a judicial emergency.

Like Judge Southwick, Judge Elrod should be confirmed without further delay.

Evaluating nominees and deciding whether to consent to their appointment is a unique and profound responsibility of this body. As we examine the nomination of Judge Mukasey to be Attorney General or the nominations of Judge Southwick and Judge Elrod to the Fifth Circuit, I urge my colleagues to focus on their qualifications. I urge my colleagues to fulfill our responsibility through a process that respects the separation of powers. I urge my colleagues to reject inappropriate standards such as political litmus tests or race.

Our judiciary is the best and most independent in the world, and I hope we will preserve this tradition in our confirmation actions and decisions in the weeks and months ahead.

EXHIBIT 1

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S.
Senate, Washington, DC.

Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN LEAHY, and RANKING MEMBER SPECTER: We served as law clerks for the Honorable Michael B. Mukasey, former Chief Judge of the United States District Court for the Southern District of New York and the President's nominee for Attorney General of the United States. Each of us had the privilege of working closely with Judge Mukasey and observing this man of great intellect, integrity, honor, and judgment. We write to express our enthusiastic support for Judge Mukasey's nomination.

Judge Mukasey's reputation as a careful and wise jurist is well deserved. In each of his cases, Judge Mukasey based his decisions—always thoughtful, carefully crafted, and well-reasoned—on the application of governing laws and legal principles to the facts. As a trial judge, he controlled the courtroom through his decisiveness and mastery of the rules of evidence. In the performance of his judicial duties, the Judge taught

us the importance of modesty and humility, for he recognized that with his position came great responsibility that had to be exercised prudently and with care. All who appeared before him were treated with fairness and respect. And as Chief Judge of the district for six years, he managed one of the nation's busiest and most respected courthouses, all the while attending to a full docket of cases.

Because of the close relationship between law clerk and judge, we came to know Judge Mukasey not only as a jurist, but also as a person. The Judge is kind, caring, loyal, ethical, and modest, with a disarming wit and robust sense of humor. He was a wonderful teacher, sharing with us his insights into life, law, and lawyering. Even after leaving our clerkships, the Judge has joined in our significant life events and provided invaluable advice—from attending our weddings, to visiting us following the births of our children, to assisting us with career choices. He remains a true friend and mentor.

Finally, Judge Mukasey is deeply patriotic and has spent most of his career in public service, first as an Assistant United States Attorney—a job he speaks of with great pride even years later—and then as a judge. Notwithstanding the immense imposition on him and his family that resulted from the terrorism cases over which he presided, the Judge proceeded without complaint or hesitation, seeing it as part of his duty to the country he loves.

The President has now asked Judge Mukasey to serve our country again, this time as Attorney General of the United States. We are certain that he will make an outstanding Attorney General. Judge Mukasey's keen intelligence, independence and judgment will bring to the country as a whole and to the Department of Justice in particular strong leadership and integrity.

We urge you to confirm him as Attorney General without delay.

Sincerely,

Steven M. Abramowitz, Clerk for Judge Mukasey, 1990-91; Laura Adams, Clerk for Judge Mukasey, 1992-93; David Altschuler, Clerk for Judge Mukasey, 2005-06; Elisabeth Bassin, Clerk for Judge Mukasey, 1989-90; Matthew Beltramo, Clerk for Judge Mukasey, 1997-98; Heana H. Kutler, Clerk for Judge Mukasey, 1995-96; David Leinwand, Clerk for Judge Mukasey, 1991-92; Justin D. Lerer, Clerk for Judge Mukasey, 2002-03; Russell L. Lippman, Clerk for Judge Mukasey, 2001-02; and Nicole Mariani, Clerk for Judge Mukasey, 2005-06.

Babette Boliek, Clerk for Judge Mukasey, 1998-99; William A. Braverman, Clerk for Judge Mukasey, 1994-95; Gidon M. Caine, Clerk for Judge Mukasey, 1988-89; Andrew J. Ceresney, Clerk for Judge Mukasey, 1996-97; Daniel Park Chung, Clerk for Judge Mukasey, 2004-05; David Cross, Clerk for Judge Mukasey, 2003-04; Thomas Dahdouh, Clerk for Judge Mukasey, 1988-89; Inayat Delawala, Clerk for Judge Mukasey, 2004-05; Anne Osborne Martinson, Clerk for Judge Mukasey, 1990-91; and Zachary S. McGee, Clerk for Judge Mukasey, 1997-98.

Sanjay Mody, Clerk for Judge Mukasey, 2003-04; Shawn Morehead, Clerk for Judge Mukasey, 2000-01; Florence Pan, Clerk for Judge Mukasey, 1993-94; Frank Partnoy, Clerk for Judge Mukasey, 1992-93; Mickey Rathbun, Clerk for Judge Mukasey, 1987-88; Katherine J. Roberts, Clerk for Judge Mukasey, 2001-02; Jenny C. Ellickson, Clerk for Judge Mukasey, 2003-04; Michael Farbiarz, Clerk for Judge Mukasey, 1999-00; Jesse M. Furman, Clerk for Judge Mukasey, 1998-99; and Bruce Goldner, Clerk for Judge Mukasey, 1993-94.

Nola Breglio Heller, Clerk for Judge Mukasey, 2004-05; Mary Holland, Clerk for Judge Mukasey, 1989-90; Michael Jacobsohn,

Clerk for Judge Mukasey, 2005-06; Emil A. Kleinhaus, Clerk for Judge Mukasey, 2002-03; Ilissa Rothschild, Clerk for Judge Mukasey, 1987-88; Andrew A. Ruffino, Clerk for Judge Mukasey, 1995-96; Sarah Russell, Clerk for Judge Mukasey, 2002-03; Hattie Ruttenberg, Clerk for Judge Mukasey, 1991-92; Eli Schulman, Clerk for Judge Mukasey, 1999-00; and Ian Shapiro, Clerk for Judge Mukasey, 2000-01.

Paul Spagnoletti, Clerk for Judge Mukasey, 2001-01; Debra Squires-Lee, Clerk for Judge Mukasey, 1996-97; Alisa Jancu Kohn, Clerk for Judge Mukasey, 1994-95; and David B. Toscano, Clerk for Judge Mukasey, 1994.

Mr. HATCH. I personally thank my colleague from Alaska for allowing me to go forth and to make these comments. I am grateful to her.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

IRAQ

Ms. MURKOWSKI. Mr. President, we have had a very good, healthy debate in the Senate this week on the subject of the war in Iraq. Sometimes it has been more spirited than usual. At times, it was spirited to the point where some things were said that perhaps did not further a good constructive debate but took the debate a little bit downhill. We in the Senate recognize it is our job to bring forward the issues, to discuss the very difficult considerations that are before us as a Congress, but to always do it in a manner that reflects the level of civility a truly good discourse, a good debate should bring.

I had an opportunity a couple days ago to speak with a general from my home State. I asked him for his comments on what he was seeing as he was watching our debate. He said: Senator, the debate has been good. The debate has been healthy. There clearly are different perspectives that are coming out on the floor, but through it all, no one has foresworn the soldier. He said: That makes me feel good as an American, certainly good as a military leader.

That is important to remember, that in the heat of debate, we not foreswear our military, that we always honor and respect that which they do in such an honorable way.

I personally want to thank Senator WEBB, the junior Senator from Virginia, for bringing forth an issue this week. This was the amendment he introduced that related to the amount of dwell time, the amount of time deployed versus the amount of time a serviceman stays at home. It was important for us to focus on the support side of our military. We know that those who are serving us over in Iraq and Afghanistan, and truly in all parts of the world, where they are separated from their families, are at their best and serving us to their fullest when they are able to focus on their job.

For those families who remain behind, who miss not having dad or mom at home or miss not having their husband or their wife with them, they