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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, February 2, 2009, at 2 p.m.

Senate

FRIDAY, JANUARY 30, 2009

The Senate met at 9:31 a.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, our shelter in the time of storm, our rock in a weary land, Lord, we live in challenging times that require more than human solutions for our problems. In the midst of these days, help our lawmakers to find in You a sure place to stand and a strong support they can absolutely trust. Lord, give them such faith in You that they will seek and follow Your guidance, living lives that honor Your Name. Rule in their hearts as they deliberate so that Your higher wisdom will prevail. Help them to remember that they must give an account to You for how responsible they are in carrying out their duties.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 30, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WARNER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, we are going to be in a period for the transaction of morning business today. Senators will be allowed to speak for up to 10 minutes each. There will be no rollcall votes today, as we announced last night. We will proceed to the consideration of the American Recovery and Investment Act of 2009 on Monday. Under a previous agreement, the Senate will debate and vote on the Holder nomination to be Attorney General of the United States. That will occur at 6:15 p.m. on Monday.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

Mr. REID. 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. CORNYN. 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. CORNYN. Mr. President, I also ask unanimous consent to speak for as much time as I may use in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Texas is recognized.

NOMINATION OF ERIC HOLDER

Mr. CORNYN. Mr. President, on Monday, the Senate will take up the nomination of Eric Holder to be the next Attorney General of the United States. I

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

serve on the Senate Judiciary Committee, and that committee held hearings regarding Mr. Holder's confirmation. Regrettably, last Wednesday, when the Senate Judiciary Committee voted that nomination out of the committee, I was a ''no'' vote.

I wish to say that originally I approached this nomination with an open mind and a determination to ask—indeed to demand—answers to legitimate questions. I think that is the responsibility of each Senator under the Constitution in performing our duties of advice and consent. I also think it is important for me to explain why, even though I approached that nomination with an open mind and a predisposition to vote for Mr. Holder's nomination, I ultimately concluded, as a result of some of the evidence, which I will lay out, I could not do so in good conscience.

Mr. Holder, of course, served as Deputy Attorney General during the Clinton administration, and if there is any public service that is more illustrative of how someone will actually perform as Attorney General, I think it would be in performing as Deputy Attorney General. The Deputy Attorney General is the one job on Earth most similar to the job for which Mr. Holder will be confirmed on Monday. It is rare to have such a clear picture of the job a nominee will do if confirmed. Thus, I reviewed Mr. Holder's record with great care, as you might expect, and also with great interest.

Unfortunately, two of Mr. Holder's actions as Deputy Attorney General: the recommendation that President Clinton commute the sentences of 16 Puerto Rican separatist terrorists and the recommendation that President Clinton pardon the billionaire fugitive Marc Rich, raised serious questions about Mr. Holder's judgment and independence from the wishes of his political sponsors—two key qualities I would hope the Senate would want for any Attorney General, independence, adherence and fidelity only to the rule of law—and good judgment.

Two other aspects of Mr. Holder's record also raised concerns for me. Mr. Holder's record demonstrates a failure to understand the profound threat posed by radical Islamic terrorism; and, second, Mr. Holder has often appeared to be hostile to the second amendment, to the constitutional right to keep and bear arms.

As I said, in the Judiciary Committee, Mr. Holder failed to answer my questions, regrettably, and the questions of my colleagues in a way that alleviated these concerns. As I will explain, I indeed found Mr. Holder's answers to be nothing short of evasive in some key respects. Because I have doubts about Mr. Holder's judgment and independence, I am opposing this nomination, and the four reasons, as I tried earlier to summarize but which I will repeat are Mr. Holder's role in the FALN and Los Macheteros commutations, his role in the Marc Rich pardon, his misjudgments and shifting opinions with regard to the war on terror, and his record of hostility toward the individual's right to keep and bear arms.

First, I would ask my colleagues to consider Mr. Holder's role in the FALN and Los Macheteros commutations. In August 1999, President Clinton offered clemency to 16 members of two Puerto Rican separatist terrorist organizations, FALN and Los Macheteros. Deputy Attorney General Eric Holder made the recommendation that he should do so. The FALN was a clandestine terrorist group devoted to bringing about the independence of Puerto Rico through violent means. Its members waged open war on the United States, with more than 150 bombings, arsons, kidnappings, prison escapes, threats and intimidation, which resulted in the deaths of at least six people and injuries to many more between 1974 and 1983.

The most gruesome attack was in 1975 in lower Manhattan. Timed to explode during the lunch hour, the bomb decapitated 1 of the 4 people killed and injured another 60. In another attack in Puerto Rico, Los Macheteros opened fire on a bus of U.S. sailors. Two American sailors were killed and nine were wounded. Fortunately, much of the leadership and membership of these terrorist groups was captured and brought to justice in the late 1970s and early 1980s. By the late 1980s, the worst of the FALN's reign of terror was over.

In the early 1990s, sympathetic activists petitioned for clemency on behalf of these terrorists, and it was an easy call for the pardon attorney. The pardon attorney is the attorney at the Department of Justice who reviews clemency requests and makes recommendations. They make sure the record is thoroughly reviewed and, as I said, then make recommendations. The fact is these unrepentant terrorists who were given clemency by the Clinton administration never even petitioned for clemency. They never even asked for it.

Pardon attorney Margaret Love, who worked for then-Deputy Attorney General Jamie Gorelick, recommended against clemency for any of these prisoners, and a recommendation was transmitted to the President. Shortly thereafter, when Eric Holder became Deputy Attorney General, he rescinded that recommendation opposing clemency and recommended that President Clinton grant clemency to these unrepentant terrorists.

Strangely, Mr. Holder still stands behind this recommendation, saying he considered it reasonable. But the reasons he gives are not persuasive. Mr. Holder claims these men were not linked to violence. That is false. These men were active members of a terrorist organization that had committed dozens of violent crimes, including, as I mentioned earlier, bombings, murder, and arson. It is true the particular crimes for which these individuals were convicted were not, in and of themselves, violent crimes, but by that standard, Saddam Hussein did not commit crimes, unless he pulled the trigger himself. Likewise, Osama bin Laden, responsible for the deaths of thousands of innocent American citizens, would not be linked to crime under the standard Mr. Holder posits.

There is ample evidence that at least some of the men for whom Eric Holder recommended clemency were, in fact, murderers. These commutations were, at the time, widely believed to have some political motivation. Indeed, the Clinton White House discussed how these clemencies would affect then-Vice President Gore's political standing within the Puerto Rican community. For this reason, I believe a full accounting of whom Mr. Holder met with, what they discussed, and what went into his decision to recommend these commutations is in order.

But there is another equally important reason that these questions must be answered. The victims of the FALN and the Los Macheteros deserve answers. I would encourage all my colleagues, before voting, to review the testimony of Joseph Connor, whose father was killed in the bombing in lower Manhattan in 1975. Mr. Connor testified that Mr. Holder did not consult with him, did not inform him or his family or other victims before recommending that the President set FALN terrorists free.

I cannot vote for Mr. Holder until I can explain my vote to Joseph Connor. Because Mr. Holder has failed to answer my questions about the FALN commutations, I do not have an explanation I can give to Mr. Connor.

One of the reasons Mr. Holder has refused to answer some questions is, it appears he is invoking executive privilege. But it is very odd because this apparent assertion of executive privilege comes despite the fact that President Clinton waived executive privilege for all testimony concerning these commutations. That is in the record of the hearing before the Judiciary Committee. I think it is unfortunate that the current administration's first apparent assertion of executive privilege seems to come for no purpose other than to protect Mr. Holder's record from scrutiny.

As I said, in 2001, President Clinton waived executive privilege with regard to the commutations and pardons he granted. In a letter to the House of Representatives, President Clinton's lawyer explicitly stated President Clinton ''will interpose no executive privilege objections to the testimony of his former staff concerning these pardons, or to other pardons and commutations he granted.''

Nonetheless, Mr. Holder continues to assert he is not authorized to testify about the so-called options memorandum, which is part of the record underlying these commutations. Instead of forthright answers about Mr. Holder's decision to recommend these

commutations or present the options memo to then-President Clinton, he has repeatedly refused to answer questions submitted by Judiciary Committee members, including me.

For example, I asked Mr. Holder whether he was aware at the time he made his commutation recommendation of the leadership positions of three of these terrorists and their alleged involvement of another murder of a U.S. Navy sailor—more than one. Mr. Holder responded that this information ''was included in [their] presentence reports which in the ordinary course would be requested and reviewed by the Office of Pardon Attorney as one of the first investigative steps.''

This answer, I have to say, is a very lawyerly answer, but it is nonresponsive to my question. It avoids the question of whether he was aware of these matters when he recommended commutation. In fact, Chairman LEAHY and Ranking Member SPECTER sent a letter to the Department of Justice citing President Clinton's waiver of executive privilege and requesting the relevant documents regarding the clemency decision. This request, inexplicably, has been denied.

Because President Clinton has waived this privilege, this assertion of privilege is apparently now being made by the present administration of President Obama. Of course, executive privilege only belongs to the principal, to the client—in this case the Executive—so it has to be either President Clinton or President Obama, and clearly President Clinton has waived it.

The Justice Department has apparently advanced the argument that the Clinton waiver applied only to testimony and not to documents, but Mr. Holder's testimony about the options paper is clearly testimony and not a document. Thus, his assertion of privilege is indeed broader than the most restrictive reading of the Clinton waiver. So who is denying the Holder authorization to testify about the options paper? Apparently, I conclude, it could only be President Obama.

Assertions of executive privilege, as we know, raise questions about the balance of power between the executive branch and the legislative branch. The Executive's interest in secrecy and confidential communications, and Congress's right to information, particularly in the context of a confirmation hearing when performing our constitutional duty of advice and consent, are in tension and, in this case, conflict. It is up to the branches to negotiate and work together to take both interests into account and to make public relevant information that bears on the qualifications and experience of members of the President's Cabinet—in this instance, Mr. Holder. I believe President Obama owes the American people—consistent with his ideals on open government, which I enthusiastically support—to make his assertion of privilege plainly and in the light of day.

Moreover, it is hard to imagine any significant executive branch interest in keeping this information secret. These documents are a decade old and concern crimes committed about 30 years ago. President Clinton, of course, is no longer in office, and he has waived the privilege. The context of these documents has been alluded to in U.S. major newspapers and even by Mr. Holder himself. So it seems to me there is no further executive branch interest in continuing to hide these documents, only a desire to shield Mr. Holder from hard questions.

In short, Mr. Holder's responses to questions regarding these commutations has been evasive. The Senate and the American people deserve forthright answers to questions that pertain to Mr. Holder's judgment, his independence, his seriousness of mind when it comes to the threat of Islamic extremism, and his qualifications to be Attorney General.

I also believe the families of the victims of the terrorist acts by the FALN and Los Macheteros terrorists deserve a full accounting for the release of terrorists who were partly to blame for their loved one's deaths. Instead of providing a forthright accounting, Mr. Holder has simply dodged the question, hidden behind an apparent claim of executive privilege, and refused to cooperate with the Judiciary Committee in getting to the bottom of some of these matters.

The next concern I have has to do with the Rich pardon I alluded to at the very beginning. Less than 2 years after the controversy surrounding the FALN commutations, on the very last night of the Clinton administration, Mr. Holder made a very similar error of judgment when he recommended that President Clinton pardon the notorious fugitive by the name of Marc Rich. At the time, Mr. Rich was No. 6 on the FBI's Ten Most Wanted List.

In 1983, then-U.S. attorney Rudy Giuliani in the Southern District of New York, obtained an indictment of international commodities trader Marc Rich and his business partner, Pincus Green. The indictment charged 65 counts of tax evasion, racketeering, and trading with the enemy.

Specific charges include illegally trading with the Ayatollah Khomeini's Iranian terrorist regime in violation of U.S. energy laws and a trade embargo against Iran.

Indeed, Mr. Rich made a fortune trading with the Ayatollah's regime at the same time that 52 American diplomats were still being held hostage in the U.S. Embassy in Iran. Mr. Rich profited by trading with Cuba, Libya, and South Africa during apartheid—all despite U.S. embargoes. Rather than face these charges head on, Mr. Rich simply fled to Switzerland where he remained a fugitive for 17 years. Federal law enforcement, with help from the CIA, the NSA, and other agencies, expended substantial resources in an effort to apprehend Mr. Rich. These efforts included extradition requests and attempts by U.S. marshals to arrest him abroad. Rich refused to return to the United States, despite an offer by prosecutors to drop the racketeering charges in exchange for his return.

In an effort to avoid his extradition, though, Mr. Rich went so far as to renounce his U.S. citizenship, and he tried to become a citizen of Bolivia. It is hard to imagine a more inappropriate candidate for a pardon than a fugitive from justice accused of trading with the enemy. Mr. Rich's own lawyer told him he ''spit on the American flag'' by avoiding the jurisdiction of U.S. courts.

According to those involved in the pardon process, including President Clinton and Marc Rich's lawyer, Eric Holder was more responsible for this controversial decision than any other member of the Clinton administration with the exception of the President himself.

In fact, on the last evening of the Clinton administration, White House counsel called Mr. Holder to solicit his views on the Rich pardon application. As Deputy Attorney General, Holder was effectively speaking for the entire Department of Justice during this crucial phone call.

Disregarding the strongly held views of hundreds of Department of Justice prosecutors and FBI agents who worked nearly two decades to bring Marc Rich to justice, Mr. Holder told Nolan he was ''neutral, leaning to favorable.''

What is crucial to understand is that Mr. Holder was not just speaking for himself but the entire Department of Justice. But with this recommendation from the Deputy Attorney General, President Clinton granted the Rich pardon, one of his last and most despicable actions.

Even after having ample opportunity to explain himself, it is unclear what Mr. Holder's rationale was for recommending this despicable pardon, as I said, which former FBI Director Louis Freeh called a ''corrupt act'' on the part of President Clinton.

Mr. Holder has admitted he made a mistake, which is commendable. But never in a full day of hearings and in answers to several written questions did Mr. Holder offer a persuasive reason for supporting this pardon—other than, apparently, caving in to pressure from the Clinton White House. Mr. Holder defends himself by claiming he was naive; and, again, we have all made mistakes. I grant that. He now admits the Rich pardon was a mistake and promises he will never make a similar mistake again. In fact, he takes the position he will be a better Attorney General because of learning from this mistake.

But this pledge is difficult to square with the fact that Mr. Holder had essentially made the same error in judgment less than 2 years before with the

FALN commutation. I am also concerned that Mr. Holder's testimony regarding key conversations and meetings on the Rich pardon seem to contradict the recollections of members of the Marc Rich legal and lobbying team.

In the fall of 2000, there was an e-mail from former White House Counsel Jack Quinn—who was representing Rich in his quest for a pardon—to the rest of the Rich legal team indicating Mr. Rich told Mr. Quinn to ''go straight to the White House.''

This suggests that Holder was telling Quinn to bypass the typical pardon process through the Department of Justice, where opponents of the Rich pardon were legion. Mr. Holder disputes this interpretation, arguing that an application sent to the White House would be forwarded to the Department of Justice in any case. Whether this is true, it is indisputable that the prosecutors in the Southern District of New York who indicted Marc Rich for the crimes I mentioned earlier—they were never asked about their views on the Rich pardon, as they would have been if the normal pardon process had been followed at the Department of Justice.

If Mr. Holder advised the Rich pardon team on strategic matters, it would be a serious violation of his duties as the second highest law enforcement officer in the land. Such aid would be particularly disappointing because a House committee had specifically reprimanded Mr. Holder for improperly aiding and facilitating the clemency application of the FALN terrorists 2 years earlier. It is not disputed, though, that the Rich pardon application was fast-tracked and sheltered from its many opponents.

It is clear to me that Mr. Holder played a role in clearing the way for this pardon and, at a minimum, he knew it had not been appropriately handled through the Department of Justice pardon process.

Nevertheless, he declared himself as ''neutral, leaning favorable'' when the White House asked him about his opinion.

In summary, Mr. Holder appears once again to simply have given President Clinton the answer he wanted. The Rich pardon recommendation is the most recent major action by Mr. Holder as a public official. I believe the evidence casts doubt on his independence and his judgment once again.

My greatest concerns, however, are that Mr. Holder fails to fully understand the unique challenges and threats posed to our country by radical Islamic terrorism. I want to explain why I say that. I agree with Mr. Holder when he says the most important duty of the Attorney General is to protect America from another terrorist attack. But his public statements regarding the war on terror too often betray a willingness to advance ideological rhetoric without fully appreciating the sensitivity and the complexity of this issue.

I find it especially troubling that Mr. Holder's legal views on national security have seemed to shift, depending upon the political mood of the day and the audience to whom he is speaking.

Shortly after the terrorist attacks of 9/11, Mr. Holder voiced support for the Bush administration's interpretation of the status of terrorist detainees. Mr. Holder said, in January 2002, that al-Qaida terrorists:

> . . . are not, in fact, people entitled to the protection of the Geneva Convention. They are not prisoners of war.

He went on to endorse indefinite detention of terrorist prisoners at Guantanamo Bay and argued that such prisoners should not be afforded Geneva Conventions protections so that they could, in fact, be interrogated to provide actionable intelligence.

He did insist, as did the Bush administration at the time, that these detainees should be treated humanely, though. But more recently, as the political winds have shifted, Mr. Holder has chastised the Bush administration for policies he now seems to believe defy the law.

There is a disturbing Jekyll-and-Hyde quality to Mr. Holder's legal pronouncements concerning our counterterrorism policies. I wish to quote from an Associated Press article entitled ''Obama AG pick defended Guantanamo policy,'' dated November 22, 2008. I ask unanimous consent that this article be printed in the RECORD following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CORNYN. Asked whether terrorism suspects could be held forever, Holder responded:

> It seems to me that you can think of these people as combatants and we are in the middle of a war.

Holder said in a CNN interview in January 2002:

> And it seems to me that you could probably say, looking at precedent, that you are going to detain these people until the war is over, if that is ultimately what we wanted to do.

Just weeks later, Holder told CNN he did not believe al-Qaida suspects qualified as prisoners of war under the Geneva Conventions.

> One of the things that we clearly want to do with these prisoners is to have an ability to interrogate them and find out what their future plans might be, where other cells are located. Under the Geneva Convention, you are really limited to the amount of information that you can elicit from people.

Holder said it was important to treat detainees humanely, but he said they:

> . . . are not, in fact, people entitled to the protection of the Geneva Convention. They are not prisoners of war.

He also downplayed criticism that prisoners were being mistreated.

> Those in Europe and other places who are concerned about the treatment of al-Qaida members should come to Camp X-ray and see how people are, in fact, being treated.

Those were essentially the same arguments the Bush administration made with regard to Guantanamo Bay with regard to holding enemy combatants who wear no uniform, who do not obey the laws of war, and are not citizens of a state, a nation state, but, in fact, are a terrorist organization bent on killing innocent civilians here and abroad in an effort to pursue their ideology.

Since then, however, these arguments have been heavily criticized, as we know, by human rights activists and leading Democrats and, inexplicably to me, Mr. Holder himself.

He said in June of 2008:

> We must close our detention center at Guantanamo Bay.

He said that in a speech to the American Constitution Society. He said:

> A great nation should not detain people, military or civilian, in dark places beyond the reach of law. Guantanamo Bay is an international embarrassment.

Holder added he never thought he would see the day when the ''Supreme Court would have to order the President of the United States to treat detainees in accordance with the Geneva Convention.''

These sharply contrasting legal conclusions were made, again inexplicably by one and the same person, Eric Holder, the nominee for the highest law enforcement officer in the United States. One can only wonder what he truly believes.

In a 2008 speech to the liberal American Constitution Society, he attacked many of the same legal positions he once held as ''making a mockery of the rule of law.''

In that same speech, Holder called for a ''reckoning'' over the Bush administration's ''unlawful practices in the war on terror.''

He also accused the Bush administration of ''act[ing] in direct defiance of Federal law'' and railed against counterterrorism policies that he claimed ''violate international law and the United States Constitution.''

In this way, Mr. Holder appears to have already publicly prejudged a potential prosecutorial question that may come before him as Attorney General, without knowing all the facts.

Now, it is one thing to change your mind, but it is quite different to change your mind and then attack the very same position you once held as one that could only be held in bad faith, describing it as ''making a mockery of the rule of law.''

I can only conclude that as an act of pure cynicism, somebody who tells you, particularly a lawyer who takes a legal position he once embraced, as now only being able to be held in bad faith, is a person who has made a bad-faith legal argument at least once.

The recent terrorist attacks in India, in Mumbai, have reminded Americans of the possibility of further attacks on U.S. soil or literally anywhere around the world. On November 26, last year, Mumbai, as we know, was ravaged by a gang of terrorists. One of the attackers

was captured while the rest were killed.

More than 170 individuals died as a result of bombings and gunfire, including 6 Americans. If a U.S. city was targeted in the same way Mumbai was, or worse, biological, chemical, other even nuclear weapons being used, it is critical that we be able to obtain the intelligence from captured terrorists in order to assess whether any other imminent attacks are in the works.

If we captured the terrorist in an ongoing attack on an American city, it is critically important that we not treat him as an ordinary criminal, with all the rights conferred by the Constitution on an American citizen. That, I believe, is one of the most important lessons we must recall and never forget from the tragedy of 9/11. To do so would effectively shut down the intelligence-gathering process and risk American lives.

When this sort of unpredictable legal challenge arises in the war on terrorism, I wish to know whether the Eric Holder of 2002 or the Eric Holder of 2008 will be calling the shots. I was not encouraged by Mr. Holder's refusal to say he would authorize aggressive interrogation against terrorists, even if he knew that to do so would prevent a major attack on an American city.

I also fear his recommendation for and continued endorsement of the FALN terrorist commutations is evidence of a failure to appreciate the continuing dangers of terrorism. At his confirmation hearing, Mr. Holder attempted to defend his poor judgment on the terrorist clemency issue by noting these commutations occurred long before 9/11.

But as I reminded him, the FALN clemencies came after the first World Trade Center bombing of 1993, and the al-Qaida attacks on U.S. embassies in Kenya and Tanzania in 1998. As Senator COBURN rightly pointed out, his clemency recommendation came in the wake of the 1995 Oklahoma City bombing right here on our own soil, the most horrific domestic terror attack that has ever occurred in our country.

So I worry that Mr. Holder is not prepared to lead the Department of Justice at a moment when this Nation is waging an asymmetric war whose battlefield extends across the globe and even onto U.S. soil.

If confirmed as the next Attorney General, Mr. Holder will inherit a complex legal architecture constructed to prevent terrorist attacks here in America and against our allies. That has admittedly been controversial. But I do not think anyone can question its effectiveness given the fact that we have not had another terrorist attack on our own soil since 9/11.

If Mr. Holder is confirmed, I hope he will study these issues and treat them more carefully and with greater deliberation and greater soundness of judgment than he has demonstrated by his conflicting positions in 2002 and 2008. I hope that rather than shifting his opinions with the political winds, he will do his very best to uphold the rule of law and the Constitution of the United States while protecting the American people by making sure we are protected within the limits of our law from future attacks.

The final issue I wish to mention is my concern about Mr. Holder's adherence to the Supreme Court ruling in the District of Columbia v. Heller, which interpreted an individual's right to keep and bear arms.

That case reversed the District of Columbia's position that said individuals could not own firearms in their homes to protect their family and their possessions. I believe this is an important victory for the second amendment that must be protected and preserved.

As the Nation's chief law enforcement officer, the Attorney General steers Federal gun law policy. The next Attorney General's views will shape not only law enforcement and prosecution priorities with regard to these issues but also the positions the Department of Justice takes in court. The views of the Justice Department will always be given considerable weight during the early stages of the law's development post-Heller.

It is crucial the next Attorney General fully appreciate that an individual's right to keep and bear arms is a fundamental freedom protected by our Constitution. I was not comforted by Mr. Holder's vague assurance that Heller now is the law of the land because it cannot be reconciled with his long record of hostility to second amendment rights.

Through his service as Deputy Attorney General and continuing to private practice, Mr. Holder has opposed the individual right to keep and bear arms. As Deputy Attorney General, he advocated for a wide variety of Federal gun restrictions. Mr. Holder's fierce hostility to gun rights continued after, as I say, his tenure as Deputy Attorney General.

Mr. Holder feels so strongly about his opposition to gun rights that he, along with his former boss, the former Attorney General Janet Reno, filed a brief with the Supreme Court in the Heller case and argued against the individual rights approach to the second amendment and in favor of the view that the second amendment protects only militia activities.

The Holder-Reno brief argued:

> The Second Amendment does not protect firearms possession or use that is unrelated to participation in a well-regulated militia.

Although the individual rights approach prevailed in the Supreme Court and in the D.C. Circuit, Holder's brief described that approach as ''unwise'' and ''unjustified.'' The Holder-Reno brief goes on to argue that, even if the second amendment protects an individual right, that right should be narrowly construed.

I worry it will be impossible for Mr. Holder to vigorously protect the second amendment rights of all Americans when he is so clearly opposed to the decision in the Heller case. I believe his hostility to the second amendment could lead the Department of Justice to take opposing positions to narrow that Supreme Court decision, particularly in court.

Holder's Heller brief was directly at odds with the Court's opinion, as we have seen. Can we expect him to vigorously enforce and protect the constitutional right to bear arms, a right with which he personally and strenuously disagrees?

Let me say, in conclusion, the Senate's advice and consent function requires us to carefully review a nominee's career, to ask hard questions, and to insist on satisfactory answers. I take this duty seriously, as I know all my colleagues do. With this nominee, I conclude that there are simply too many questions to which I have not yet heard a satisfactory answer.

Why would he recommend clemency for unrepentant terrorists?

Why would he recommend a pardon for a fugitive who made billions trading with America's enemies? Did Mr. Holder know one of the men whose clemency he recommended was linked to the murder of a U.S. sailor and, if so, did he communicate this to the White House? Why did Mr. Holder consult with Mr. Rich's prosecutors before recommending a pardon? Why is President Obama asserting executive privilege to prevent Mr. Holder from testifying about these commutations? Was Mr. Holder's judgment in the Rich and FLAN clemency decisions influenced by the outcome that he believed President Clinton wanted so badly? How can I explain to Joseph Connor, whose father was killed in the 1975 bombing in lower Manhattan, that the man who never spoke to his family before championing clemency for the men responsible for his father's murder will be the next Attorney General of the United States?

Does Mr. Holder appreciate the gravity of the threats and the complexity of the legal issues posed by the war on terror? Can Mr. Holder be counted on to support and defend the constitutional right to keep and bear arms?

I can't answer these questions with any degree of certainty. I regret to say I will vote against the nomination of Eric Holder to be the next Attorney General.

EXHIBIT 1

OBAMA AG PICK DEFENDED GUANTANAMO POLICY)

(By Matt Apuzzo)

WASHINGTON. Nov. 22, 2008—President-elect Barack Obama's choice to become the next attorney general, Eric Holder, once defended the Bush administration's arguments for holding detainees at Guantanamo Bay, a position that runs counter to his more recent comments—and to a signature policy of the incoming administration.

Holder, a confidant to Obama on legal issues, recently has been a leading voice in the chorus calling to close Guantanamo Bay, which he has described as an international embarrassment. Likewise, Obama has called

it a ''sad chapter in American history,'' pledged to close the island prison and criticized the Bush administration for arguing that terrorism suspects aren't covered by standards set by the Geneva Conventions.

But in the months after the Sept. 11, 2001, terror attacks, Holder defended the Bush administration's policies at Guantanamo.

Asked whether terrorism suspects could be held forever, Holder responded: ''It seems to me you can think of these people as combatants and we are in the middle of a war,'' Holder said in a CNN interview in January 2002. ''And it seems to me that you could probably say, looking at precedent, that you are going to detain these people until war is over, if that is ultimately what we wanted to do.''

Just weeks later, Holder told CNN he didn't believe al-Qaida suspects qualified as prisoners of war under the Geneva Conventions.

''One of the things we clearly want to do with these prisoners is to have an ability to interrogate them and find out what their future plans might be, where other cells are located,'' said Holder, the former deputy attorney general during the Clinton administration. ''Under the Geneva Convention, you are really limited in the amount of information that you can elicit from people.''

Holder said it was important to treat detainees humanely. But he said they ''are not, in fact, people entitled to the protection of the Geneva Convention. They are not prisoners of war.'' He also downplayed criticism that prisoners were being mistreated.

''Those in Europe and other places who are concerned about the treatment of al-Qaida members should come to Camp X-ray and see how the people are, in fact, being treated,'' he said.

Those were essentially the arguments of the Bush administration. Since then, those arguments have been criticized by human rights groups, leading Democrats, and Holder himself.

''We must close our detention center in Guantanamo Bay,'' Holder told the American Constitution Society this summer. ''A great nation should not detain people, military or civilian, in dark places beyond the reach of law. Guantanamo Bay is an international embarrassment.''

Holder added that he never thought he'd see the day where the ''Supreme Court would have to order the President of the United States to treat detainees in accordance with the Geneva Convention.''

Those comments are in line with Obama's views. Holder did not return e-mail and telephone messages seeking comment about his earlier interviews. Brooke Anderson, a spokeswoman in Obama's transition office, restated Obama's commitment to opposing torture.

''Eric Holder shares that view,'' she said. ''The president-elect has complete confidence that Eric Holder will be an attorney general who will restore respect for the rule of law and for our international commitments.''

Obama's advisers are crafting plans to close Guantanamo Bay, release some detainees and bring others to the United States to face trial. One unanswered question, however, is what to do with detainees who could not be prosecuted in criminal courts without jeopardizing national security.

The Justice Department under Holder almost certainly would help answer that question.

In introducing Holder and other members of his national security team, Obama said he welcomed differences of opinion.

''I assembled this team because I am a strong believer in strong personalities and strong opinions,'' he said. ''I think that's how the best decisions are made.

''I will be responsible for the vision that this team carries out,'' Obama said, ''and I will expect them to implement that vision once decisions are made.''

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALEXANDER. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ECONOMIC STIMULUS

Mr. ALEXANDER. Mr. President, next week the Senate begins the debate of the so-called stimulus package. I wish to talk about that for a few minutes. It is $1.2 trillion of borrowed taxpayer money to be spent in an effort to help get our economy restarted. Here is my position on it, and I believe the position of most Republicans and of some Democrats. We believe that in order for the stimulus to be effective, it should be reoriented on housing. First, fix the real problem: housing. If housing is restarted, if home values are stabilized, and if people are buying homes, that will do more to help restart the economy than anything else. Second, we should let people keep more of their own money. A true stimulus is permanent tax relief. If people have more of their own money in their pockets, they will have more confidence. They will be able to buy more. After reorienting toward housing, that will also help restart the economy.

Since we are borrowing so much of this money, especially, we believe it ought to be oriented directly toward those items that would specifically create jobs now. It should not go toward good sounding ideas such as Head Start and Pell grants for college students that we may want to take up later, maybe as early as the following week, in a regular appropriations bill. So that is our belief: reorient the stimulus toward housing, let people keep more of their own money, and get the stuff out of the bill that has nothing to do with creating jobs now, in the next few months or in the first year.

We know Americans are hurting. Every single Senator knows that. Our country's economic turmoil is hitting every family where it matters, in the family budgets. More than 860,000 properties were repossessed by lenders in 2008, more than double the 2007 level. Manufacturing is at a 28-year low. Tennessee is a State that relies heavily on manufacturing. The unemployment rate is 7.2 percent, too high. It has been higher. I can remember at a time when I was Governor of Tennessee in 1982, the unemployment rate was 12 percent, but 7.2 percent is too high. There were 1.9 million jobs lost in the last 4 months of 2008. The long-term unemployed, people out of work for 27 weeks or more, rose to 2.6 million in December of 2008. So there are a number of steps we need to take as a government, and we have been taking them.

At a hearing this week, where the Presiding Officer and I are both members of the Budget Committee—and we probably agree those hearings were excellent—Douglas Elmendorf, Director of the Congressional Budget Office, reminded us of the steps the Government is already taking. The Federal Reserve negotiated the sale of Bear Sterns to JPMorgan Chase, $29 billion, to form a new limited liability company. Fannie Mae and Freddie Mac, the agencies that guaranteed half the home loans in the country, were taken over by their regulator and the Treasury put up $100 billion to stabilize that situation. The Federal Reserve extended $60 billion in a line of credit to the American International Group, the insurance company called AIG. We had a debate in October where on both sides of the aisle, two-thirds of Republicans as well as many Democrats voted to give the Secretary of the Treasury $700 billion to invest in troubled assets or to use in a variety of ways to try to keep our economy from going straight down. It has gone down, but it didn't go straight down; we believe this is partly because of the action the Congress and the President took at that time.

What we had was, in effect, a wreck on the highway. There is an old Roy Acuff song by that title. I think that is the best way to explain what was happening. It was like a wreck on the interstate outside Knoxville and suddenly traffic is backed up all the way to Lenoir City or even Kingston. One lane was the money for the bank loan, the next lane was the money for your auto loan, and the next lane was for meeting payroll. As long as that wreck was on the highway, none of the money could get where it needed to go, and nobody could borrow on anything. It is better today than it would have been, but we still have a deeply serious problem.

The law we passed in October temporarily raised the insurance for deposits from $100,000 to $250,000. Steps were taken to guarantee money market funds. The Treasury, Federal Reserve, and Federal Deposit Insurance Corporation announced agreements with Citibank and Bank of America. They created a liquidity program for the banking system.

The Federal Government, in all of its variety of agencies, has been very busy since October using taxpayer dollars, where necessary, or the Federal Reserve balance sheet, or Federal Deposit Insurance Corporation funds collected from banks to try to create a situation in which our economy can restart.

We know, having visited with President Obama and his team of advisers, that they are thinking of even more things we may need to do. But next week in the Senate we will be talking about whether it is a good idea to borrow $1.2 trillion and spend it as the Appropriations and Finance Committees