

**U.S. Senate Judiciary Committee
Hearing on the Nomination of John D. Ashcroft to be
Attorney General of the United States**

Questions Submitted by Senator Patrick Leahy

**With Comments by Kevin B. Zeese, Executive Director,
Common Sense for Drug Policy Legislative Group**

Questions for Senator John D. Ashcroft:

ROLE AS ATTORNEY GENERAL

Q. As Attorney General, how would you choose your law enforcement priorities?

Ashcroft: As Attorney General I would set my law enforcement priorities in consultation with the expert staff of the Department. I would also consult with law enforcement and Members of this Committee. Although it is impossible to assess all my priorities at this juncture, I can stress, as I did at the Committee's hearings, that among my very top priorities would be targeting racial profiling and prosecuting gun crimes.

Zeese's Comment: It is good to hear that Senator Ashcroft will be making racial profiling a top priority. However, this is somewhat hard to believe because it is a reversal of his stance while a senator. He used his subcommittee chairmanship to stop consideration of a racial profiling data collection bill.

In the drug field the Department of Justice has too often targeted low level dealers rather than cartel leaders. As a result the federal prison population, especially among young African Americans, has risen dramatically in the last decade. Relying on the professional advice of DOJ employees is not enough to stop this misuse of federal resources. A conscious decision needs to be made to focus on high level dealers and allow states to prosecute the lower level dealers. Senator Ashcroft should be encouraged to re-evaluate DOJ prosecutorial priorities.

CONSTITUTION

Q. Given the number of constitutional amendments you have supported, what assurances can you give us that all your energies will be concentrated on upholding the Constitution rather than implementing your views of how it might be improved?

Ashcroft: I joined my colleagues in a number of proposed constitutional amendments. However, those efforts reflect a fundamental respect for the Constitution and for the mechanism that that document establishes for altering the text. Indeed, it is precisely because I do not believe that courts should alter the Constitution that, in the role of legislator, I joined those efforts to formally amend it. As Attorney General, my job would be to enforce the law, not to amend it.

Zeese's Comment: In addition, in the criminal law enforcement context, Sen. Ashcroft has supported legislation that would decimate the Fourth Amendment. The Fourth Amendment has been greatly weakened by the war on drugs. Still, Senator Ashcroft sponsored legislation that would have undermined it further. In S. 486, The Methamphetamine Anti-Proliferation Act, which was written by Senator Ashcroft, police, would have been granted the authority to conduct secret warrantless searches. The bill would have empowered Federal, State and local law enforcement agencies, to enter private property – e.g., homes, businesses, automobiles – to conduct criminal searches without a warrant and without any legal obligation to inform the private property owner that a search and seizure was conducted until months later, if at all. This view of police power under our Constitutional system raises questions about Sen. Ashcroft's judgment to be Attorney General.

SENTENCING

Q: Under what circumstances do you support using drug treatment as an alternative to prison sentences?

Ashcroft: I support the President's proposals for a comprehensive approach to illegal drugs, including expanded treatment, increased use of drug courts, and maintenance of drug-free prisons.

Zeese's Comment: This is an artful evasion by Senator Ashcroft. He has a history of opposing treatment and prevention.

Favors Cutting Education and Prevention to Expand Funding for Interdiction: In a debate on CNN on July 9, 1998 Senator Ashcroft advocated cutting the budget for prevention and putting it into interdiction. He said: "if you were to take the money that's been allocated or is projected for this you could double the amount of interdiction that we're doing along the border, double the amount of drug effort by the INS." The federal drug control budget is already out of balance in this regard – favoring interdiction and law enforcement by two to one over prevention, education, treatment and research. Rather than correcting this imbalance Senator Ashcroft favors building on it. Cutting the prevention budget is likely to result in an increase in adolescent drug abuse – the issue that has been the primary concern of most Americans.

Favors Cutting Treatment Funds to Support Law Enforcement: Senator Ashcroft told a conservative think tank in 1997 "a government which takes the resources that we would devote toward the interdiction of drugs and converts them to treatment resources, and instead of saying 'just say no' says 'just say maybe' or 'just don't inhale' . . . is a government that accommodates us at our lowest and least." (Anthony Lewis, "Out of Sight," *New York Times*, January 6, 2001.) In fact, research by the RAND Corporation indicates that the most cost-effective way to reduce cocaine consumption and the cocaine market is by increasing funding for drug treatment programs. RAND found that treatment is ten times more cost effective than interdiction in reducing the use of cocaine in the United States; (Rydell, C.P. & Everingham, S.S., *Controlling Cocaine*, Prepared for the Office of National Drug

Control Policy and the United States Army, Santa Monica, CA: Drug Policy Research Center, RAND Corporation, 1994). Despite this research, and despite the already out-of-balance spending on law enforcement, Senator Ashcroft favors spending less on treatment in order to fund law enforcement further.

FORFEITURE

Q. The Justice Department's "Equitable Sharing" program allows the Attorney General to share federally forfeited property with participating state and local law enforcement agencies, and has proven controversial with State legislatures, which are concerned that state law enforcement uses the program to bypass state laws that require seizures to be used for other purposes, such as education. Would you agree that by allowing state authorities to evade their own state laws, the Equitable Sharing program creates an intolerable intrusion on state sovereignty? Would you work with me to correct this problem, by ensuring that property transferred to a state or local law enforcement agency under the Equitable Sharing program is subject to any requirement of state law that limits the use or disposition of forfeited property?

Ashcroft: Although I have not studied this problem closely, I would be happy to work with you to address any problems in the program in a way that respects both the needs of law enforcement and the constitutional demands of state sovereignty.

Zeese's Comment: In 2000 the Congress passed a forfeiture reform bill. One of the issues debated was whether to curtail the federalization of forfeitures. At the same time the scandal about federalization being used to avoid the Missouri Constitution and the Missouri Supreme Court decision broke in the Kansas City Star. Thus Senator Ashcroft was a member of the Judiciary Committee which debated the issue and from the state where this issue was a scandal. It is hard to believe that he would not study the problem. Either he did not do his job or he chose to continue to look the other way

Q. Under Article IX of the Missouri Constitution, the proceeds of forfeitures are supposed to be distributed to local school boards. Yet even after a 1990 Missouri Supreme Court decision found their actions to be in violation of the state Constitution, Missouri law enforcement agencies would end-run the constitutional requirement by bringing seizures to a federal agency for "adoption." Money returned through the "Equitable Sharing" program would go directly to the Missouri law enforcement agency. As Governor, did you ever indicate that you would "look the other way" should the Missouri police ignore the state Constitution and Supreme Court decision requiring asset forfeiture moneys to go to education? Did you ever take steps to stop this practice, and if so, what steps did you take?

Ashcroft: I am unfamiliar with a number of the facts or assertions embedded in the question, but I would not suggest to any law enforcement officer or agency that I would "look the other way" should they act contrary to the Missouri Constitution. I would expect the Missouri State Highway Patrol to act in accordance with any advice provided by the Missouri Attorney General's office pursuant to a state Supreme Court decision on this subject. Missouri local law enforcement agencies are not administratively responsible to state officials or agencies, but they

should act in accordance with legal advice provided by a county prosecutor or municipal counsel.

Zeese's Comments:

1. Senator Ashcroft had no choice but to deny he made the statement. Admitting that he would "look the other way" would end his chance at being Attorney General. Even many Republicans could not vote for an Attorney General who told police he would let them violate the state constitution and ignore a state supreme court decision. If the allegation is true, he had no choice but to deny it. On the other hand, Don Burger, the source for this information, is a former DOJ official who has nothing to gain by making the accusation. Indeed, he is making a very powerful enemy, so comparing their claims does not favor Ashcroft.

2. The facts are consistent with the "look the other way" comment. During Senator Ashcroft's tenure as governor no state police forfeiture money went to the public schools as required by the Missouri Supreme Court and Missouri Constitution. However, from 1990 to 96 (unfortunately annual break downs are not available) -- after the Supreme Court decision and during a portion of the time when Senator Ashcroft was governor -- over \$20 million came back to the state police. That means the schools were denied many more than tens of millions of dollars while Ashcroft was governor.

3. Senator Ashcroft did not respond to the senate judiciary question regarding what steps he took to ensure the law was followed. There is no record of any steps he took. Providing examples of steps he took to ensure the Missouri Constitution and Missouri Supreme Court were followed would have been a credible denial of Burger's allegation. Yet, Senator Ashcroft did not take this opportunity because he could not provide any examples of steps he took to ensure the law was followed.

4. If what Senator Ashcroft says is true -- that he did not know what his state police were doing -- then he does not sound competent to administer the Justice Department. He did not know what his own police were doing about a highly publicized Missouri Supreme Court decision? Senator Ashcroft is either a very poor administrator or dishonest. Neither characteristic serves him well in the job for which he has been nominated.

Q. Senator Lincoln witnessed racial integration as a young elementary school student in Helena, Arkansas, and has a strong commitment to ending racial injustice, especially in our system of public education. While respecting whatever personal views you may have on school desegregation programs in general, why did you take extraordinary steps as Attorney General of Missouri to fight the implementation of a voluntary desegregation plan in St. Louis? According to the record in this matter, you unsuccessfully appealed the issue of "remedial scope" in *Liddell v. State of Missouri* multiple times to the same court, presumably because you hoped to receive a different response. While bringing multiple appeals in a particular case in itself isn't necessarily a cause for concern, under what circumstances do you think it is a legitimate use of public resources to bring multiple appeals before the same court on a particular issue when your initial appeal is rejected? Once a court has ruled on an

issue and you have exhausted your appeals before higher courts, you accept the decisions rendered in the case and move on. Is that your view as well, or was there something different about the St. Louis case that justified your vigorous actions over several years to prevent implementation of the desegregation plan in that matter?

Ashcroft: I fully agree that segregation is wrong and unconstitutional. I strongly support integration in all our nation's schools. My actions in this case reflected my obligation as the state attorney general to defend my client in the litigation, and each appeal represented a separate, appealable legal issue, not an attempt to re-litigate already decided issues. Indeed, Missouri's current attorney general, a Democrat, has pursued a similar course of litigation representing the state of Missouri. And I of course agree that once the court has ruled, one must accept the court's ruling, subject, of course, to any right of appeal. Indeed, in Missouri, I repeatedly had to urge fealty to rule of law in the face of political pressure to do otherwise from other elected officials.

Q. Senator Carl Levin has requested answers to the following questions:

(F) In your speech to the Claremont Institute, you said that funding for drug treatment "accommodates us at our lowest and least." Who or what are the "lowest and least"?

Ashcroft: In my speech at the Claremont Institute, I was expressing the concern that our paramount message to America's youth must be that drug use is wrong. Of course, I agree that treatment must be part of a comprehensive approach to combating drug use. Such treatment, however, should not come at the expense of undermining the primary message.

Zeese's Comment: Senator Ashcroft did not answer Senator Levin's question. Does he view all drug users as the "our lowest and least." Does it depend what drug? Does it depend on the race of class of the user? He did nothing in the senate to support drug treatment or prevention programs. Senator Ashcroft fails to recognize that drug abuse can also be a health problem. What about children who have alcoholic or drug addicted parents? For genetic or environmental reasons these children may end up with an addiction problem. Shouldn't part of the message of government policy be to provide assistance to these people? Doesn't compassion have a role in our drug policy? Should these people be demonized as the "lowest and the least."