

# ASHCROFT'S

BY CHITRA RAGAVAN

**T**he small Cessna Citation was just over Grand Rapids, Mich., when the secure phone rang. Attorney General John Ashcroft listened intently, interrupting the caller repeatedly. After hanging up, he turned to his small staff. "The world," he said, "has changed forever."

The change wreaked by the September 11 terrorist attacks was greater for Ashcroft than for any other member of President Bush's cabinet. Donald Rumsfeld would have to torque the Pentagon bureaucracy in radically different ways to fight a radically different enemy. Colin Powell would have to recalibrate American diplomacy to deal with the starkly changed realities of the post-9/11 world. But Ashcroft, as the nation's top law

## Special Report

enforcement officer, would have to turn more than a century's worth of jurisprudence on its head and begin enforcing the nation's laws in a fundamentally new way. Traditionally,

the Justice Department's role was to punish miscreants after the fact. That, as President Bush told Ashcroft bluntly after the attacks, was no longer good enough. "John," Bush said, "don't let this happen again."

The attorney general, in a wide-ranging interview with *U.S. News*, said he has taken the president's message to heart. "I may be the person more responsible for trying to shape the national consciousness in saying that prosecution is not enough for the Justice Department anymore," he said. "It has to be actively involved in prevention. And in order to move an institution and its mentality, sometimes you have to draw very clear lines."

Clarity, however, has hardly been achieved. Ashcroft today is easily the most polarizing member of the Bush cabinet, and his policies are sure to emerge as an important area of contention between President Bush and whoever the Democratic nominee turns out to be. In Iowa and New Hampshire, Ashcroft's name alone is a guaranteed applause line for the Democratic hopefuls. Politics aside, the legal initiatives with which he is most closely associated have become increasingly controversial. Several federal judges and an appeals court in New York have challenged key Ashcroft policies, and the Supreme Court is set to review the issues later this year. Among the more than 9,000 career lawyers at Jus-



# WAY

America's top cop has been demonized and lionized. He's a complex guy all right, just not the guy everyone thinks he is



**TALENT.** Colleagues say Attorney General John Ashcroft is a multifaceted man.



**APPEARANCES.** Above, Ashcroft with the president at a service for slain police officers. Right, sharing a lighter moment with FBI chief Robert Mueller and Homeland Security Secretary Tom Ridge.



tice, for whom Ashcroft professes deep admiration, the attorney general is a divisive figure. "He's become so radio-active," says a Justice Department veteran who likes and respects Ashcroft, "that he couldn't announce a free school lunch initiative without people questioning it."

**Jekyll and Hyde.** For all of the controversy he manages to attract, John Ashcroft is one of the least understood men in Washington. Derided as a religious zealot by some, Ashcroft has never invoked religion in policy or procedural discussions, say colleagues, who add that they have never even seen him pray. Challenged during his confirmation hearings as insensitive to minorities, Ashcroft worships regularly at a mostly black church. An ardent opponent of abortion, Ashcroft is praised by pro-abortion-rights groups for prosecuting violence against abortion clinics. A long-time gun-control foe, Ashcroft has increased prosecutions of certain gun

crimes nearly 70 percent over three years. "One of the things that's frustrating about watching from the outside is he's a very charming, intelligent guy," says James Comey, who was confirmed as Ashcroft's deputy a month ago and served as the top federal prosecutor in Manhattan before that. "He's shockingly smart, but most people wouldn't think that. The guy is ferociously honest, but there are people who would not believe that. To some in the public, he is Darth Vader, but it's unfair because he's really not that way."

Ashcroft, colleagues say, is focused, hardworking, and dedicated. "I've always felt that he sincerely believed in the trusteeship element of public service and was very concerned about living up to his obligation," says Michael Chertoff, who

served as Ashcroft's criminal-division chief and is now a federal judge. Chuck Rosenberg, a former career prosecutor, is counselor to Ashcroft. "If you force me to pick one word to describe him," Rosenberg says, "it's integrity. He holds that as his greatest and most important value. He exudes it." A former administration official who knows the attorney general well agrees, but with an important caveat.

## RESPECTING THE CLIENT, WITH CLARITY

**I**n a wide-ranging interview, Attorney General John Ashcroft discussed his tenure with U.S. News & World Report Editor Brian Duffy and Senior Writer Chitra Ragavan.

**On whether he is a polarizing, controversial figure:** "I don't think so. I think the Justice

Department is very unified."

**On whether he has politicized the department:** "That sounds like you're describing a different planet . . . the president relieved me of the responsibility to think politically when I came here. I don't go to fundraisers. I don't get involved in politics. I don't make political speech-

es. I don't make political comments. I don't endorse candidates. I just *don't*, because justice is an arena in which we need to have the capacity to serve . . . without regard to politics. And that's why I'm basically out of politics. And I rejoice in that fact in many respects."

**On being criticized about expressing his religious faith:** "That's sort of like

Thomas Jefferson, when he said, 'Endowed by their Creator with certain unalienable rights . . .' Is that what they're talking about? You know, sort of like 'In God We Trust' being the national motto, is that what they don't like . . . you know, when I say the pledge, do I say, 'One Nation under God,' yeah, with the rest of the audience? At



ice as governor and attorney general in Missouri and his one term in Congress as junior senator there, he was happy to leave the political wars behind. "The president *relieved* me of the responsibility to think politically when I came here. . . . And I rejoice in that fact in many respects."

**Distortions.** Who is John Ashcroft, then, and why has he become such a lightning rod? Dick Foth is Ashcroft's best friend. They have known each other for 54 years, but Foth allows that while he knows the answer to the first question, he is at a loss to answer the second. Ashcroft is an avid hiker, and one day last fall he, Foth, and a few friends were walking along the grassy Mall near the Lincoln Memorial. It was a gorgeous day, and the sun was just setting, Foth recalls, when they happened upon a group of teenagers from the Future Farmers of America. "When John walked up the steps, the kids broke into applause," Foth recalls. "When people meet him personally in

As Ashcroft approaches "the more political aspects of the job," this man says, "he's still got the strident partisan senatorial mind-set firmly in place. There's almost a Jekyll and Hyde quality."

Rocking back in a comfortable leather armchair in his paneled office on the fifth floor of the Justice Department, Ashcroft was amused by such comments. "I don't think you're dealing with a split personal-

ity," he joked. Relaxed in loafers and shirt sleeves, he is taller than he seems in his public appearances and on television. Webs of wrinkles around puffy eyes betray the long days and heavy workload. Asked if he believes he has politicized the Justice Department, Ashcroft, suddenly, seemed deeply troubled. "That sounds like you're describing a different *planet*," he said. He elaborated, explaining that after his serv-

an informal setting, they find him likable, engaging, and funny." And yet, Foth marvels, his friend's public image gets "exponentially distorted, like the parlor game of Gossip." Ashcroft is as puzzled as anyone by the level of cognitive dissonance. "When I read some of those descriptions" in the press, he said, "I get scared of me."

The son of Pentecostal missionaries,

least *most* of the rest of the audience. And I have never felt like I should not say that because . . . it's the heritage of the country . . . and it's not like the references to God and the Creator in America have ever been exclusive."

**On what his critics view as his harsh rhetoric:** "I think clarity is one of the most important features in leader-

ship. And if what you're saying is that I haven't sort of obscured in softer, politically acceptable terms what we're really doing . . . you know, the American people are the client of this law firm. And we need to let them know exactly how we're handling things. And I respect the client at the highest level."

**On refusing to apologize for**

**the preventive detention of more than 700 illegal aliens and the mishandling of some detainees by prison guards:**

"I don't apologize for a system that can ensure the security of the United States by detaining individuals who were in violation of the law, pending the outcome of their adjudication. To the extent that anybody is found to have been mistreated we

will address that aggressively and have."

**On how September 11 changed his priorities:** "I think mobility may be the single freedom that people care most about . . . So it became clear that we had to work as a team to protect our capacity for that kind of freedom, for all kinds of freedom in our culture."



Ashcroft is a deeply religious man who says he has tried to live his life on the principle that actions have consequences and without consequences, life is meaningless. His mother, the daughter of a Great Lakes sea captain, taught him self-sufficiency. His father prayed daily, asking God to help his three sons do something “noble” each day. During World War II, when Ashcroft’s father was denied a job as a military chaplain because of his lack of formal education, he vowed never to let that happen to his sons, and he provided all of them with a strong education.

Young John was a gifted athlete, earned a degree in history but eschewed a career in the ministry, obtaining a law degree instead. Foth says critics err when they characterize Ashcroft as “right wing” or “religious.” “He

was born in Chicago, got an education at Yale and the University of Chicago, and was raised in the Ozarks,” Foth says. “He’s a very multifaceted man.”

Ashcroft isn’t the first complex political figure to invite controversy; it’s just that the controversy, in his case, seems so intense and, at times, at variance with the facts. During his confirmation hearings, Democrats attacked him for remarks he made as a senator, mischaracterizing a respected African-American judge as “pro-criminal.” But last year, Ashcroft’s then deputy, Larry Thompson, who is African-American, commissioned a consulting group to conduct a diversity study of the Justice Department. The study documented a plethora of complaints by minority at-

torneys, which Ashcroft’s aides say he wants to fix. Ashcroft’s colleagues say he genuinely cares about diversity. Roscoe Howard, the U.S. attorney for the District of Columbia, is an African-American who meets regularly with Ashcroft. “We have talked about diversity, not only in the [Justice] department but also in [my] office, how I was going to accomplish that. And how it was important to him as attorney general. I think that there’s an aspect of him that the public just hasn’t gotten to know. He’s a *good guy*.”

## “When I read some of those descriptions, I get scared of me.”

ATTORNEY GENERAL JOHN ASHCROFT, reacting to criticism in the press

Even some critics say Ashcroft has been a good attorney general. “I think he’s doing fairly well,” says Wisconsin Republican James Sensenbrenner, chairman of the House Judiciary Committee, who has taken Ashcroft to task in the past. Ashcroft got an A- for effectiveness last January from the nonpartisan magazine *National Journal*, second only to Secretary of State Powell. “I think he has been a strong attorney general,” says Glenn Fine, Justice’s inspector general, the department’s watchdog. “He has a clear mission. He has pursued that mission.”

**Prodding.** In assessing Ashcroft’s role as attorney general, two useful areas of inquiry are abortion and the death penalty. Vicki Saporta, president and CEO of the National Abortion Federation, says

that while access to Ashcroft’s Justice Department is tougher than it was under his predecessor, Janet Reno, the attorney general, “with regular prodding,” has aggressively protected abortion clinics from violence and prosecuted clinic bombers. Upon taking office, Ashcroft decided not to dismantle the national task force on clinic bombings created by Reno. He has provided federal protection for doctors facing death threats, put abortion clinic bombing suspects on the FBI’s 10-most-wanted list, and launched a terrorism investigation into hundreds of fake-anthrax

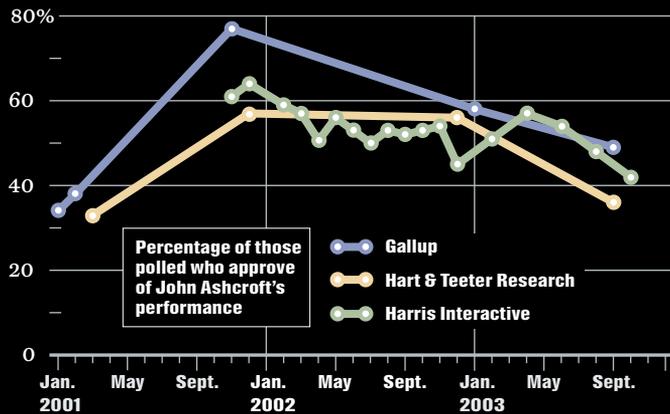
threat letters received by abortion clinics. But Saporta says Ashcroft also created a “breach of trust” and a “conflict of interest” by asking the same prosecutors who protect clinics to prosecute them if they violate

the new ban on so-called partial-birth abortions. That aside, Saporta says, “on numerous occasions, they have done the right thing.”

The reason—one of the rare areas of agreement among some critics and supporters of the attorney general—is Ashcroft’s belief that *all* the laws must be enforced consistently. This has won Ashcroft a reputation by many at Justice as a “prosecutor’s attorney general.” But that can cut both ways. Nearly 40 percent of the cases Ashcroft has authorized for the death penalty have been against the wishes of U.S. attorneys. On the other hand, Ashcroft seldom rejects their requests to *seek* the death penalty. “He’s imposing his own views on the death penalty on the entire nation,” says David

## MIXED REACTION

John Ashcroft's popularity, up in polls after Sept. 11, 2001, fell as his antiterrorism legal strategies grew controversial.



**CHANGED WORLD.** Ashcroft (far left) at his Senate confirmation hearing. Above, New York Mayor Rudolph Giuliani (left) gives Ashcroft a tour of ground zero.

USN&WR

Brock of the Death Penalty Research Center. But Justice sources say Ashcroft usually accepts the recommendations of his capital murder committee. Even some of Reno's former colleagues say Ashcroft is applying the *right* principles. "A lot of what he is doing, centralizing some of the decisions away from the U.S. attorneys, could eliminate some of the disparity [in prosecutions from district to district]," says Robert Litt, a Justice Department lawyer who worked for Reno. "I agree with the structural ideas. I disagree with the policies he sets. But he has a right to set those policies."

This same ethos helps explain why Ashcroft, the gun-control foe, has increased certain gun-crime prosecutions, like those of felons carrying guns. Critics say the attorney general is ignoring laws that target rogue gun dealers, but Justice spokesman Mark Corallo says prosecutions of dealers are actually up 150 percent.

It also explains why Ashcroft wrote a letter to the National Rifle Association, without consulting with his appellate lawyers, to assert his own interpretation of the Second Amendment. In Ashcroft's conception, it protects the individual's right to bear arms, not just the militias' right—which has been the accepted jurisprudence for decades. The Ashcroft letter triggered at least 130 court challenges in federal gun cases in Washington, D.C., and Virginia alone. Having kicked over the hornet's nest, Ashcroft then helped his prosecutors fight, and win, every case. Mathew Nosanchuk, litigation director of the Violence Policy Center, says Ashcroft's "pandering" to the NRA "put the Justice Department on a collision course with itself."

By far the most important criticisms of Ashcroft's Justice Department have to do with its response to the 9/11 attacks. Ashcroft and the department have been rebuked by Fine, Justice's inspector general, for unwarranted detention and abuse of some illegal immigrants immediately after the attacks. Civil liberties groups have challenged some provisions of the U.S.A. Patriot Act—the antiterrorism law passed after 9/11—as unduly intrusive. Although a Gallup Poll last year found that 70 percent of Americans felt the law was either strong enough or could be toughened even more, for many, the Patriot Act has become a symbol of what they view as Ashcroft's legal excesses.

In fact, the law has nothing to do with the measures for which Ashcroft has drawn the most heated criticism. The Patriot Act, the government argues, was designed to update laws passed before cellphones and the Internet were created, to allow FBI agents to obtain wiretaps on multiple cellphones and track terrorism suspects' Internet usage. It also allows federal agents to obtain terrorism suspects' business records—including their library browsing habits—while delaying notification that their homes have been searched, with a federal judge's approval.

Controversial? Sure, but federal judges and civil liberties groups have focused on other, more troubling Justice Department policies outside the Patriot Act. They cite policies like jailing terrorism suspects as "material witnesses" so that they can be interrogated by investigators and prosecutors, even though they have not been charged with any crime. Or the preventive detention of illegal aliens and the 600-odd secret trials of those detainees. Or

Ashcroft's legal defense of the administration's detention of thousands of "enemy combatants" at Guantánamo Bay, Cuba—with no prospect of trial for most. Ashcroft also modified existing rules to allow the government to detain illegal aliens even after courts ruled that they should be released—measures that four federal judges have ruled unconstitutional. "The public, in its wonderful ignorance or infinite wisdom, has wrapped all these theories into one ball," says University of Maryland legal scholar Michael Greenberger, "and attacked the Patriot Act as an easy target to express their deep anger over what's happening."

**By the numbers.** Public perceptions aside, there are growing questions about whether Ashcroft's prevention paradigm works. In his new book *Enemy Aliens*, Georgetown University law Prof. David Cole examines the preventive detentions of roughly 5,000 foreign nationals—Muslim men—after the terrorist attacks. Only three were ultimately charged with terrorism-related crimes. Just one was convicted. At the time, Ashcroft called the detainees "suspected terrorists" and announced the deportation of more than 500 Muslim men as a signal victory in the "war on terror." In fact, the 500 were deported only after the FBI found no terrorist ties. "They were misses," Cole says, "not hits."

A study by researchers at Syracuse University found still more troubling news. While the Justice Department has sharply increased terrorism prosecutions, the study found that only a handful of defendants were sentenced to lengthy prison terms. The study, whose conclusions the FBI disputes, found that

while the Justice Department convicted 184 people of crimes related to “international terrorism,” the defendants were sentenced to average prison terms of just 14 days and, in some instances, received no jail time. Remarkably, after 9/11, fewer numbers of defendants in terrorism-related cases were sentenced to five years or more than before the attacks.

Ashcroft is unapologetic about his tactics or their results. “One thing that’s clear to me, every day of my life,” he said, “when I look at the world, I see terrorism has not abated. It’s flourished. And it’s my view that the terrorists would rather hit us than anybody else. That’s why we are still referred to as ‘the Great Satan.’ So preventing, or interrupting, disrupting, displacing, dislocating, delaying—anything we do to prevent terrorist attacks, is important.”

That’s precisely the kind of rhetoric that gets Ashcroft in trouble, with critics seizing on terms like the hair-raising “anything.” “Clearly the actions, policies, and laws he’s promulgated,” says the American Civil Liberties Union’s executive director, Anthony Romero, “show a fundamental lack of concern for enforcing civil liberties and civil rights.”

**Outside the box.** Ashcroft’s rhetoric, however, is often at odds with his actions out of the public eye. Several aides recounted the story of a Justice Department brainstorming session in Ashcroft’s office shortly after 9/11. “One of our colleagues, she said something pretty far-fetched that wasn’t going to work,” says Thompson, Ashcroft’s former deputy. “I remember John sternly turning to her and saying, ‘I asked you to think outside the box but not outside the Constitution.’” Says another official, “You can always find staff people, younger people trying to push the envelope. I think Ashcroft was, in general, a more moderating influence.”

Current and former associates say that much of the damage to Ashcroft’s image has been self-inflicted. “His aides have a philosophy that it no longer matters reaching the undecideds, because they don’t vote; what really matters is ener-

gizing your base,” says a Justice Department official. “And I think their political view of the world is that we don’t need to reach out to anybody but the people who like us and love us.”

Some of Ashcroft’s difficulties may be the result of his management style. Like a CEO of a major corporation, the attorney general believes his job is not to micromanage but to offer big-picture, results-oriented leadership—what he likes to call “noble inspiration.” But the hierarchical structure his political aides have instituted to accommodate that style has

tunity to get close to him have been impressed. Last year, prosecutors working in Roscoe Howard’s office in Washington were exhausted by a 10-month trial of a violent drug kingpin. “Ashcroft learned about it,” Howard recalls, “and he made a personal call to each one of them.” An ardent sports fan who owns a Michael Jordan bat from the superstar’s brief baseball career, Ashcroft regularly organizes basketball matches with visiting U.S. attorneys in the FBI gym across the street. Despite his age, says Chertoff, the former criminal division chief, “he’s strong under

the boards.” A fierce competitor on the court, Ashcroft is a softie off it, aides say, springing for ice cream for the losing side. “What’s frustrating is that some of the public perception is exactly wrong,” says his colleague Dan Bryant, assistant attorney general for legal policy. “The reality is that he has a fundamental regard for people.”

But few have had a chance to see that side of Ashcroft. What junior staffers saw was what they considered politicization of the civil servant ranks. Ashcroft’s aides announced that they would personally sign off on all career staff bonuses and on new attorney hires. “The assumption,” says the former official, “is that they



**“The terrorists would rather hit us than anybody else.”**

THE ATTORNEY GENERAL, *in defense of his tough approach*

isolated Ashcroft from his employees, several Justice officials say. Says a former career official who worked for Reno and Ashcroft and respects both: “It’s like forgetting your customers.” The implications, however, are real. When Ashcroft took office, his political aides, chief of staff David Ayres and deputy chief of staff David Israelite, known as “The Davids,” instituted a system of using mainly phones and E-mails to seek information from career staff, then funnel that information to Ashcroft. But he was so overworked, especially after 9/11, that fewer and fewer career attorneys ever saw the AG, and many say decision making within the department became increasingly opaque. “You didn’t know how the decision was made,” says the former career official. “You couldn’t challenge it because there was no one to talk to.”

As Ashcroft has settled into his job, however, those who have had the oppor-

were going to fill the vacancies with attorneys who were Republicans.” Even the interns were vetted for Republican pedigree, sources say. Veteran career staffers perceived as loyal to Reno were pushed out or detailed to what they joked were “re-education camps,” U.S. attorneys’ offices in remote locations. In a letter to the *Washington Post* late last year, a former career manager, Richard Ugelow, said Ashcroft had “summarily removed and transferred five career managers, including myself,” and accused the attorney general of “disdain and utter contempt for career Department of Justice attorneys.”

Ashcroft says he is just being a tough manager. “In computers, they say ‘garbage in, garbage out.’ Well, frankly, we need to get the very best possible people,” Ashcroft said. The antipathy bubbled over when the department’s most senior career official, Stephen Colgate,



**WORKING MAN.** Ashcroft confers with staff members during a morning meeting in his Justice Department office.

retired and delivered an emotional farewell address, praising Reno. "A lot of people had a poker face. But inside, they were saying, 'You go, Steve!'" says a former official.

**Curtains.** Ashcroft's replacement of Colgate with the president of a small Bible college only solidified his image as an ideological attorney general. But what really tarnished his image was the "blue drape" story. Beverley Lumpkin, a veteran Justice Department journalist, wrote a column for *ABCNews.com* in which she reported that someone on Ashcroft's staff had ordered a set of blue drapes to cover two art deco statues, including the *Spirit of Justice*, in the Justice Department's ceremonial Great Hall. Lumpkin reported that she was unable to confirm the tip that Ashcroft was behind the coverup because he was offended by the statue's bare breast. But some news outlets that picked up the story blamed Ashcroft, and the item solidified the attorney general's reputation as a religious prig. "I did not order that drape, and I didn't know it was going to be put up," Ashcroft told *U.S. News*, "until after it was put up." Justice spokesman Corallo proffered an explanation: President Bush was planning a visit to the department, and a White House advance team wanted blue drapes for the televised event. A Justice Department employee purchased the drapes, and the rest, well, has been an

acute public-relations aggravation for Ashcroft, who, Corallo says, couldn't have cared less about the bare-breasted statue. "There are plenty of bare breasts," he says, "in murals and reliefs all over the department."

Still, Ashcroft's own actions on other matters have sometimes contributed to the perceptual problems. He has even managed to inflame the nation's librarians. In seeking to allay concern about the provision of the Patriot Act that allows federal agents to obtain the library records of terrorism suspects, Ashcroft complained that librarians were wallowing in "baseless hysteria."

A federal judge in Detroit recently blasted the attorney general for violating a gag order in a major terrorism prosecution, causing the attorney general to issue a written apology. His naming of scientist Steven Hatfill as a "person of interest" in the FBI's investigation of the anthrax attacks two years ago triggered a civil suit that is pending. And his decision to announce, from Moscow, the arrest of al Qaeda suspect Jose Padilla on charges of scheming to deliver a "dirty bomb"—a crude radiological device—somewhere in the United States left White House aides grumbling about the Justice Department's headline-grabbing.

More and more, there's grousing among prosecutors, who say they duck when Ashcroft blows into town to announce a big case because they fear that his po-

larizing presence could taint the jury pool. Says Kris Kolesnik, a former veteran investigator for Ashcroft's friend Sen. Charles Grassley of Iowa: "He's not being advised on how to talk about cases without seeming to politically interfere. He thinks he's going to be tough on terrorists. He doesn't realize it's interfering with the administering of justice."

Aides say that some of these perceived gaffes result from the daily margin calls Ashcroft makes, trying to balance the need to protect sensitive terrorism investigations against his desire to inform and recruit the public in the war on terrorism. "He's very concerned and cognizant of what he says publicly," says a senior official. But to many at Justice, Ashcroft's rhetoric betrays a failure to understand the department's true mission. "They don't have a big sense of the institution," says a Justice official. "Their decision is driven by, 'How do we win this battle now.'"

As much as he genuinely admires the men and women who work with him at Justice, that's a charge to which the attorney general, given the burden he feels to help prevent another terrorist attack, just might plead guilty. ●

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