

New York Times praises Bush nominee for attorney general, Michael Mukasey

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The *New York Times* published an article on Thursday that typifies the way in which the liberal media and political establishment has lined up behind Bush's selection for attorney general, Michael Mukasey.

In "Big Terror Trial Shaped Views of Justice Pick," *Times'* national legal correspondent, Adam Liptak, begins with a reverent description of Mukasey's handling of the trial of Omar Abdel Rahman, who was found guilty of planning to blow up New York city landmarks.

"On Jan. 17, 1996, after a nine-month terrorism trial and a rambling 100-minute lecture from a blind sheik found guilty of conspiring to wage war against the United States, Judge Michael B. Mukasey had had enough," Liptak writes. Mukasey responded with "a few terse stern and prescient remarks" and sentenced Abdel Rahman to life in prison.

Liptak then gives the moral of the trial: "Long before most Americans had given deep consideration to the terrorist threat from radical Islam or to whether the criminal justice system is the right forum for trying people accused of terrorism, Judge Mukasey received an intensive education on those topics." In other words, Mukasey saw farther than the rest of the country, anticipating the danger posed by terrorists and grasping the need to fundamentally curtail democratic rights.

Who is the individual who receives such fulsome praise from the *New York Times*? Mukasey is a deeply reactionary "law and order" judge, who in his tenure on the US District Court for the Southern District of New York demonstrated scant regard for democratic procedures and the rights of the accused.

In one of his most significant recent decisions, Mukasey ruled in 2002 that Jose Padilla, a US citizen captured on US soil, could be held indefinitely under

military custody as an "enemy combatant." He is a strong supporter of using the "war on terror" as a justification for severely curtailing civil liberties and creating an entirely new legal structure under which those accused of terrorism can be denied due process of law.

In a *Wall Street Journal* editorial published last month, Mukasey supported a proposal—advanced by Andrew McCarthy, who was the lead prosecutor in the Abdel Rahman case—that would create a separate "national security court" operating independently of the regular court system. He also supported a proposal by former deputy attorney general George Terwilliger—a leader of Bush's legal team during the 2000 election dispute—to establish a form of "civil commitment" to detain "national security" suspects without trial.

Mukasey has no fundamental differences with the Bush administration over its handling of the "war on terror." To the extent that he has voiced criticisms of the government's position at times—as in his ruling that Padilla must have access to a lawyer while in military confinement—it has been from the standpoint that the curtailment of democratic rights should be formally institutionalized and that the aim should be to make the judicial system suitably repressive, rather than to circumvent it.

This is a position with which the *New York Times* essentially agrees, along with the sections of the well-heeled liberal establishment and Democratic Party that the newspaper represents.

It is worth recalling the response of the *Times* to the guilty verdict in the trial of Jose Padilla. The civilian trial was held only after Padilla spent three-and-a-half years in solitary confinement in a military brig, where he was tortured. The trial was based on minimal evidence, with the government case built largely on the

attempt to associate Padilla with Osama bin Laden in the minds of the jury.

The *Times* wrote, in an editorial published on August 17 of this year, “It is hard to disagree with the jury’s guilty verdict against Jose Padilla.” The newspaper only bemoaned the fact that Padilla’s mistreatment made it impossible to try him on the original charges brought by the Bush administration, and also made possible an appeal of the conviction.

The *Times* portrait of Mukasey is that of a pioneer, someone who, in the words of Liptak, came to the conclusion that “the urgency of the threat requires tilting toward protecting national security even at some cost to civil liberties.” He is someone who, after the trial of Abdel Rahman, became “deeply skeptical about the ability of civilian courts to try people accused of terrorism without compromising national security.”

The attempt by the *Times* to present the trial of Abdel Rahman as a turning point in Mukasey’s thinking is less than convincing. Mukasey has been a long-time supporter of strengthening the hand of the state and curtailing the rights of defendants.

A *Washington Post* article from September 18 notes that Mukasey came to the defense of friend and associate Rudolf Giuliani when, in 1985, then-US attorney Giuliani was criticized for playing fast and loose with democratic procedures in the prosecution of mafia figures. “The Mafia exists,” Mukasey wrote in a *New York Times* editorial. “It is not the creation of novelists and journalists. It has exacted a toll of misery that would shame the Inquisition and a toll in treasure that would embarrass the Pentagon.”

In another case, reported in an article in the *Post* published on Friday, Mukasey sought repeatedly to throw out a lawsuit brought by a former New York City Police officer, Karen Sorluccho, who said that the police department fired her after she accused a senior officer of rape. Mukasey first dismissed the case before it went to trial, but a higher court overruled this decision. After the jury found in favor of Sorluccho, Mukasey attempted to overturn the verdict. A higher court again had to overrule him.

From this incident, which indicates Mukasey’s close ties to the New York City police, ties shared by Giuliani, the *Post* concludes sympathetically that it “showed a judge insistent on doing what he felt the law compelled, even when a jury and higher court

disagreed.”

The media has seized on the line, promoted by Mukasey supporters in the Democratic Party, including New York Senator Charles Schumer, that the judge is “independent” and “intelligent.”

A more accurate picture is given by Ronald L. Kuby, a defense lawyer in the case of Sheik Abdel Rahman, who noted to the *Times*, “[Mukasey] was violating the rights of Arabs before it was popular.” Speaking of the Abdel Rahman case, Kuby noted, “It was very much like trying a case with two prosecutors, one of whom was wearing a black robe and was considerably more intelligent than the one hired for the job.”

The *Times* article by Liptak notes that Kuby was removed from the case by Mukasey on conflict of interest grounds, while “other defense lawyers generally praised Judge Mukasey’s handling of the case.”

In fact, the removal of Kuby on dubious grounds was itself an example of Mukasey’s attitude to the democratic rights of the accused. A *Times* article published on August 26, 1994 noted that with Mukasey’s decision, “lawyers who have been most in demand by various defendants, and who have been the most visible public advocates of those accused, have now been entirely squeezed out of the case in what has to be seen as a major victory for the Government.”

The *Times* article, and the almost certain Senate confirmation of Mukasey with the overwhelming support of the Democratic Party, is one more indication of the essential unanimity within the American ruling elite on the evisceration of democratic rights.



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