

US attorney general nominee refuses to condemn torture techniques

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The Bush administration's nominee for attorney general, Michael Mukasey, refused on Tuesday to declare that waterboarding and other torture techniques are illegal. He also repeated a series of positions undermining basic democratic rights on questions of detention, domestic spying and presidential power.

Mukasey's statements came in the form of written responses to questions submitted by members of the Senate Judiciary Committee, which is currently considering the nomination. Several of the questions from Democratic Senators focused on interrogation techniques reportedly used by the CIA. Among these is waterboarding, which involves strapping a prisoner to a board, covering his face with cloth, and pouring water over it to induce the fear of drowning.

Asked whether "simulated drowning, dogs, forced nudity, stress positions, beatings, and induced hypothermia" are "unlawful," Mukasey responded with evasions. He wrote, "As described in your letter," the techniques "seem over the line or, on a personal basis, repugnant to me." However, "hypotheticals are different from real life, and in any legal opinion the actual facts and circumstances are critical," he said. "I was and remain loath to discuss and opine on any of those alternatives at this stage."

Mukasey pleaded ignorance about the nature of the techniques. He also argued that any statement of his would aid "our enemies" and might "present our professional interrogators in the field ... or those charged with reviewing their conduct, with either a threat or a promise that could influence their performance in a way inconsistent with the proper limits of any interrogation program they are charged with carrying out." That is, if the likely future attorney general declared such barbaric interrogation techniques to be unlawful, it might prevent interrogators from continuing to employ them.

Mukasey's claim that the question is a "hypothetical" is

absurd, as all the techniques are clearly defined and illegal, according to both national and international law.

Waterboarding in particular has been prosecuted as torture in US military courts since the Spanish-American War of 1898. All the techniques cited in the question are violations of Geneva Convention prohibitions on torture and cruel, inhuman and degrading treatment—prohibitions that are also included in separate US law such as the War Crimes Act.

While entirely in line with his prior positions, Mukasey's responses on the question of torture have created difficulties for Democratic senators who had previously indicated that he would be confirmed easily. Leading Democrats are now concerned that if Mukasey gets through without even nominal opposition it will be extremely damaging to the party's attempt to present a pretense of opposition to the administration.

A vote on recommending Mukasey is scheduled for the Senate Judiciary Committee some time next week. If the nomination then comes before a full vote in the Senate, Mukasey is likely to be confirmed.

Whether or not Mukasey eventually gets through, the very fact that the attorney general nominee—potentially the highest ranking official in the Justice Department—cannot repudiate torture techniques as part of his confirmation hearing is an indication of the extreme decay of American democracy.

Whatever evasions and hair-splitting he might employ, Mukasey's comments are a tacit acknowledgment that the US government employs torture as a matter of policy, and that therefore any attorney general who categorically rejected such methods as illegal would be an unacceptable choice for the position.

Last month, the *New York Times* reported on secret Justice Department memos from 2005 that explicitly endorsed CIA techniques, including waterboarding. Mukasey again claimed ignorance in response to

questions on these memos.

Among the principal concerns of Mukasey and Bush administration officials is to keep its “enhanced interrogation” program going, while at the same time avoiding any prosecution for what are clearly illegal actions. Mukasey said that he would not want any US officials or interrogators to believe that “any conduct of theirs, past or present, that was based on authorizations supported by the Department of Justice could place them in personal legal jeopardy.”

In several other answers and during two-day hearings that took place last month, Mukasey reiterated the extremely antidemocratic positions that he has long held. He defended his ruling as a US district court judge that Jose Padilla, a US citizen captured on US soil, could be held indefinitely without charge by the military as an “enemy combatant.”

Mukasey also defended his proposal to set up a separate judicial system to try “national security” cases, which would involve sharply curtailed civil and constitutional rights. He also defended the indefinite detention of prisoners at Guantánamo Bay, Bush’s vast expansion of domestic spying, and the government’s policy of “extraordinary rendition”—the transfer of prisoners to other countries where torture is routine.

On the critical question of executive power, Mukasey made clear that he supports the position taken by the Bush administration that it has the power to ignore laws passed by Congress if it deems them to abridge the president’s supposed powers as “commander-in-chief.”

“The President must comply with a constitutional law passed by Congress,” Mukasey wrote. “If a law falls outside the Constitution, however, the President of course must follow the Constitution, which is our Nation’s highest law.” Administration officials have argued at different times that such laws as the War Crimes Act and the Foreign Intelligence Surveillance Act may unconstitutionally violate the president’s powers to torture and spy on the American people as part of the “war on terror.”

Mukasey also defended an expansive interpretation of the principle of executive privilege and indicated that he would not appoint a special prosecutor to investigate the administration’s politically motivated firing of US prosecutors.

One of Mukasey’s main concessions to the Democrats was his assertion that he would support “going to Congress whenever we can; it always strengthens the hand of the president.” This has been one of the main

demands of the Democratic Party—that in carrying out its attack on democratic rights, the Bush administration should do so within the framework of Congress and not outside of it. Leading Democrats are currently working to pass a law that would vastly expand domestic spying programs and provide a legal cover for the administration’s warrantless wiretapping program.

In spite of Mukasey’s comments, no leading Democrat on the judiciary committee has said that Mukasey’s nomination will be blocked. The committee’s chairman, Patrick Leahy, said he was “very concerned” about the answers, but did not say he would vote against the nomination. Senator Richard Durbin also left open the possibility of a vote for Mukasey.

Mukasey’s principal backer among Democrats—New York Senator Charles Schumer, who originally proposed Mukasey to the Bush administration as a suitable candidate—has remained quiet in response to the nominee’s recent remarks. A likely outcome of the nomination process is that a certain percentage of Democrats will vote against Mukasey in order to provide a show of opposition, while the nomination is nevertheless allowed to go through.

Even if the nomination is blocked, the entire process has demonstrated again the essential unanimity between the two parties in the attack on democratic rights.

Ed Gillespie, the counselor to the president, in defending Mukasey’s positions on torture, pointed to this fact when he noted in an interview with CNN Wednesday morning that details of the CIA’s “enhanced interrogation program” had been submitted to Congress, including Democratic Party leaders. “Those who have been briefed on the program have said that the program is legal,” Gillespie asserted.

Gillespie also noted that a vote in the Senate last year had rejected a proposal that would have prohibited the CIA from using waterboarding and other forms of torture. The Military Commissions Act, passed in 2006 after the Democratic Party rejected a filibuster attempt, provided a legal foundation for the CIA’s secret interrogation program.



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