

Bipartisan support for authoritarian measures

Democratic senator defends vote for Bush's attorney general nominee

Joe Kay

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The US Senate Judiciary Committee voted on Tuesday to support the Bush administration's nominee for attorney general, Michael Mukasey, a former federal judge. The 11-8 vote virtually assures that Mukasey will be approved by the full Senate, which is expected to vote in favor of the nomination by a comfortable margin later this week.

Two Democrats—New York Senator Charles Schumer and California Senator Dianne Feinstein—joined nine Republicans to give Mukasey a majority on the committee. Schumer has played a critical role from the beginning, having initially recommended Mukasey to the Bush administration as a suitable candidate.

The nomination of Mukasey, a right-wing judge with a history of antidemocratic decisions, had been expected to sail through the Senate with little opposition from either party. Both the Democrats and Republicans are agreed on the need to expand state powers and attack democratic rights. Mukasey was seen as a consensus candidate—one who would continue the policy of the Bush administration, but in a way that involved greater consultation with Congress.

The Democrats' open enthusiasm for Mukasey hit a snag when the question of torture was raised during nomination hearings last month. With Mukasey refusing to state that waterboarding—a form of slow-motion suffocation that has become part of the administration's arsenal—is torture and illegal, leading Democrats adopted a more critical posture. At the same time, the vote by Schumer and Feinstein assured that the nomination was not blocked.

In an opinion piece published in the *New York Times* on Tuesday (“A Vote for Justice”), Schumer lays out the attitude of the Democratic Party leadership as a whole—making clear that it has no fundamental differences with the Bush administration and is not prepared to do anything to halt its illegal practices.

On the basic question that became the focus of the nomination process—torture—Schumer is deliberately evasive. “I deeply oppose this administration's opaque policy on the use of torture—its refusal to reveal what forms of interrogation it considers acceptable.”

The choice of language is deliberate. It is not the policy of torture itself to which Schumer objects, but rather the fact that this policy is “opaque.” Schumer and the Democratic Party as a whole support the CIA's program of “enhanced interrogation,” even if

there are quibbles over some of the details on what methods should be used.

Schumer goes on to say that he thinks waterboarding is illegal, but this too is a dodge of the more basic question of torture itself. The senator has made clear statements defending the use of torture in the past, including shortly after the infamous photographs of torture at Abu Ghraib in Iraq were released in 2004. During testimony of then-Attorney General John Ashcroft before the Senate Judiciary Committee, Schumer insisted that there should be a “balance” in the discussion on torture.

“We ought to be reasonable about this,” Schumer said. “I think there are probably very few people in this room or in America who would say that torture should never, ever be used, particularly if thousands of lives are at stake.” He then repeated the standard “ticking time bomb” justification, also employed by the Bush administration, to justify torture.

Schumer went on to declare, “It's easy to sit back in the armchair and say that torture can never be used. But when you're in the foxhole, it's very different. And I respect—I think we all respect the fact that the president's in the foxhole every day.” He called not for a ban on torture, but greater “guidance” on torture policy.

Nor was Schumer alone in his position at the time. There was much discussion within the liberal political establishment over the acceptability of torture. The rhetoric has to some extent shifted, with the Bush administration insisting that it does not “torture,” while still defending “enhanced interrogation.” Nevertheless, the US government's policy of torture, and the Democratic Party's complicity, has remained unchanged.

The attitude of the Democratic Party on the question of torture is paralleled on every aspect of the illegal and antidemocratic policies of the Bush administration. During the course of his Senate hearings, and in the answers he gave to written questions, Mukasey defended his support for the right of the president to detain anyone, including US citizens, indefinitely as “enemy combatants” without charge. He also defended Guantánamo Bay, domestic spying, and “extraordinary rendition.”

None of these positions pose serious obstacles to support from the Democratic Party. Indeed, if Mukasey had agreed to declare waterboarding illegal, without changing any of his other positions—including his refusal to declare as torture the use of

dogs, forced nudity, beatings, exposure to extreme temperatures and stress positions—he would have likely received the backing of many more Democrats.

In his opinion piece, Schumer defends his vote for Mukasey on the grounds that the Department of Justice “is a shambles and is in desperate need of a strong leader, committed to depoliticizing the agency’s operations.”

Given Mukasey’s positions and the policy of the Bush administration, a “strong leader” at the Justice Department can only mean someone who is more effective at attacking democratic rights, spying on the American people, and rounding up immigrants. If there is anything that the population has to be concerned about, it is a strong Justice Department, not a weak one.

Schumer goes on to warn that if Mukasey is rejected, Bush will appoint someone else, perhaps without seeking the Senate’s approval. In other words, it is necessary for the Senate to confirm Mukasey, in spite of his position on torture and other antidemocratic policies, because Bush might circumvent Congress and unilaterally appoint someone with essentially the same positions. This argument is in line with the position of the Democrats that it is better for the attack on democratic rights to be pursued with the approval and collaboration of Congress, rather than without it.

The attitude of Schumer to Mukasey underscores the real significance of the confrontation over Alberto Gonzales, who resigned in August following pressure from Democrats and sections of the Republicans. In his column, Schumer writes that if Mukasey is not confirmed, someone more closely aligned with Vice President Dick Cheney would be appointed, and “all the work we did to pressure Attorney General Alberto Gonzales to resign would be undone in a moment.”

The WSWS wrote at the time that the resignation of Gonzales was “an attempt to reach a more secure, bipartisan basis for the continued attack on democratic rights in the US.” (See “US Attorney General Alberto Gonzales resigns”) The selection of Mukasey, with the backing of key Democrats including Schumer, was intended to do precisely this. Gonzales had become a liability because of his overt partisanship in the firing of several US attorneys who resisted Republican attempts to manipulate elections.

Throughout the confrontation with Gonzales, the more fundamental issues of democratic rights were deliberately obscured. Democrats did not want to make central such questions as torture, illegal domestic spying, and presidential power because this would make more difficult the confirmation of someone who shared Gonzales’s positions on these questions.

The Democratic Party has also consistently rejected methods that would hold the administration accountable for its repeated violations of US and international law, including impeachment. Instead, the Democrats helped pass a bill, the Military Commissions Act, in October 2006, that included a provision granting retroactive immunity to US officials who engaged in torture.

One of the principal reasons that Mukasey cannot declare waterboarding to be torture is that such a declaration could potentially expose top administration officials to prosecution for

past and present actions. Whatever their posturing, the Democrats have no more interest than the administration itself in seeing this happen.

In a final attempt to explain his decision to support Mukasey, Schumer declared that Bush’s nominee “has demonstrated his fidelity to the rule of law, saying that if he believed the president were violating the law he would resign.”

This is a deliberate obfuscation. Schumer ignores Mukasey’s statement that, “If a law falls outside the Constitution...the President of course must follow the Constitution, which is our Nation’s highest law.” This is an endorsement by Mukasey of the Bush administration’s position that the president can ignore laws that it considers to unconstitutionally abridge the president’s “commander-in-chief” powers, which it considers to be unlimited.

Schumer goes on to state that Mukasey “personally made clear to me” that if a law banning waterboarding were in place, the president would have to obey it. This “personal” guarantee, which is not in Mukasey’s public testimony, amounts to nothing. In any case, Schumer knows very well that no such law will be passed. Even if it gained enough support in Congress—which is unlikely—it would be vetoed by the Bush administration.

The nomination of Mukasey is another attempt by the Democratic Party to prop up one of the most unpopular administrations in US history—and one that openly flouts national and international laws. Mukasey is the latest in a series of attempts to install more bipartisan cabinet members, including Defense Secretary Robert Gates, who replaced Donald Rumsfeld shortly after the Democrats took control of Congress in January.

The greatest fear of the Democrats is that the Bush administration, through its own policies, could become destabilized and completely discredited, threatening a social movement in the US that would threaten the bipartisan policy of military aggression and attacks on democratic rights.



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