

Senate confirms Mukasey as attorney general

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Former federal judge Michael Mukasey was formally sworn in as the US attorney general Friday, less than a day after the Senate confirmed his nomination by a 53-40 vote.

The confirmation vote marked the completion of the Senate Democrats' capitulation to the Bush administration's torture policy, as well as its assertion of virtually unlimited executive power in any area of policy related to "national security."

Six Democrats and "independent Democrat" Joseph Lieberman of Connecticut joined with all 46 Republicans in voting to approve the nomination of Mukasey. These six included Charles Schumer of New York and Dianne Feinstein of California, the two Democrats on the Senate Judiciary Committee who played the critical role in salvaging the nomination after Mukasey provoked an uproar by declining to characterize waterboarding as torture.

Schumer and Feinstein provided the margin of approval on the Judiciary Committee, which ratified the nomination by an 11-8 vote and sent it to the floor of the Senate earlier in the week.

The other four Democrats for Mukasey were Evan Bayh of Indiana, frequently mentioned as a potential vice-presidential candidate in 2008, as well as Thomas Carper of Delaware, Ben Nelson of Nebraska and Mary Landrieu of Louisiana.

Even more important than the six Democrats (plus Lieberman) whose votes put Mukasey over the top, were the overwhelming majority of Senate Democrats who voted no, but refused to conduct a filibuster to stop the confirmation vote from taking place at all.

A total of 39 Democrats and independent Bernard Sanders of Vermont, who caucuses with the Democrats, voted against Mukasey. The four Senate Democrats who are running for president, Hillary Clinton, Barack Obama, Joseph Biden and Christopher Dodd, skipped the vote but had already announced their opposition.

This means that there were many more than the 40 votes required to sustain a filibuster if the Senate Democratic leadership had decided to prevent a vote. While in the minority, before 2006, Senate Democrats mustered 40 votes on a number of occasions to block particularly odious Bush nominees to the federal judiciary.

The four-hour debate Thursday was typical of the conduct of the Democrats since they took control of Congress as a result of the 2006 congressional elections. There was much breast-beating about how bad Bush was, how terrible his policies were, and how much the Democrats were offended. But not offended enough, apparently, to actually conduct themselves as an opposition, and block the nomination.

Senator Patrick Leahy, chairman of the Judiciary Committee, denounced Mukasey's claim that he could not declare waterboarding to be torture because he had not been given access to classified information on the exact techniques employed by CIA interrogators, even though waterboarding has been prohibited under both US law and the Military Code of Justice.

"This is like saying when somebody murders somebody with a baseball bat and you say, 'We had a law against murder but we never mentioned baseball bats,'" Leahy said. "Murder is murder. Torture is torture."

Yes, and cowardice is cowardice, prostration is prostration.

Equally fierce rhetoric came from Senator Edward Kennedy, perhaps the Senate's dean of high-minded outrage, who declared, "We cannot afford to take the judgment of an attorney general who either does not know torture when he sees it or is willing to look the other way."

Kennedy and the rest of the Senate Democrats, however, were "willing to look the other way" rather than resort to a filibuster, just as they have been

“willing to look the other way” rather than block any further funding for the war in Iraq.

It is hard to decide which was more revolting, the impotence of the Democrats who cast their votes against Mukasey, or the hypocrisy of those who argued in his favor, despite admitting that he had clearly signaled that the Bush administration would continue its torture policy.

Feinstein of California declared, “This is the only chance we have” to approve a replacement for disgraced former attorney general Alberto Gonzales, who resigned in September. She cited Bush’s threat to name an acting attorney general to run the Justice Department on an interim basis for the final 14 months of his administration—as though such an arrangement would be any more damaging to democratic and civil rights, and constitutional norms, than the rubber-stamping of Mukasey.

Schumer of New York, who actually suggested Mukasey to the White House as a replacement for Gonzales, was unrepentant in his Senate speech. “No one questions that Judge Mukasey would do much to turn around the Justice Department and much to remove the stench of politics from this vital institution,” he said.

It was Schumer who played a major role in the campaign against Gonzales that led ultimately to his ouster. He consistently sought to focus, not on the most blatantly antidemocratic aspects of Gonzales’s tenure, such as the approval of illegal wiretapping, spying and interrogation techniques, but on those actions in which Gonzales sought to favor Republican electoral prospects at the expense of Democrats. These included the now-notorious firing of US attorneys who prosecuted political corruption cases against Republican officeholders or who declined to bring politically motivated cases against Democrats.

Schumer’s reference to removing “the stench of politics from this vital institution” expresses his belief that under Mukasey the FBI and other repressive agencies will go back to their regular tasks of terrorizing immigrants, minorities and political opponents of the crimes of American imperialism, without being sidetracked into ventures that disrupt the bipartisan unity of the two big business parties.

He also cited the fact that some 12 of the 15 top-level Justice Department positions are currently vacant or

occupied by officials serving on an acting basis, without receiving Senate confirmation. Once Mukasey takes charge, he said, there would be a steady flow of nominees to fill the vacancies, and the Senate would be well positioned to influence Justice Department policy as it acts on those nominations.

In other words, Schumer—and the other Senate Democrats—look forward to a much greater degree of collaboration between Congress and one of the major repressive arms of the federal government.



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