

Michael Mukasey: Another Loyal Bushie

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The Michael Mukasey Senate Judiciary Committee confirmation hearing has demonstrated that Mukasey cannot be relied upon to function independently as U.S. Attorney General. Nevertheless, Senators on the Senate Judiciary Committee seem so thrilled that Mukasey is not Alberto Gonzales that they're willing to vote for him even though he's another loyal Bushie. Patrick Leahy (D-Vt.), chairman of the Senate Judiciary Committee, backed down on his promise to hold up the confirmation hearing until the administration turned over material his committee had requested regarding several investigations. Leahy said of Mukasey after the hearing, "He's at least answered the questions, which is better than his predecessor. He's going to be different than Gonzales on all the issues, I think. He will certainly be better than Gonzales on morale."

But saying that Mukasey compares favorably to Alberto Gonzales is faint praise for the nominee. The former Attorney General resigned during a firestorm of criticism about his U.S. Attorney purges, and his repeated claims of memory loss when he testified before the Senate Judiciary Committee.

Mukasey doesn't seem to have a memory problem; he relied on a different excuse for dodging the Senators' hard questions: he hasn't been "read in on" the details of Bush policies, such as interrogation techniques, or the "Terrorist Surveillance Program." Mukasey claims he doesn't know what water boarding is, so he can't say if it constitutes torture. Say what? Mukasey's claimed ignorance of water boarding is about as credible as his predecessor's convenient claims of amnesia. Rear Adm. John Hutson (USN Ret.) testified at the confirmation hearing, "Other than, perhaps the rack and thumbscrews, water boarding is the most iconic example of torture in history. It was devised, I believe, in the Spanish inquisition. It has been repudiated for centuries."

Mukasey made the incredible assertions that "we do not torture" and "I don't think people are mistreated" at Guantánamo. The main problem he sees with Guantánamo is that "nobody owns it," that is, there is jurisdictional overlap between the Justice and Defense Departments. Mukasey callously told Sen. Dick Durbin before the hearings that Guantánamo was used as a "fright wig," and after all, detainees receive "three hots and a cot, health care better than many Americans, and taxpayer-funded Korans."

The rest of us haven't been "read in on" the classified details either. But we know that torture and inhuman treatment is Bush policy in spite of the fact it's illegal. The 2005 Department of Justice memos recently leaked to the New York Times say the government is engaging in water boarding, head slapping and exposing people to frigid temperatures, the International Committee of the Red Cross said the treatment of prisoners in U.S. custody is tantamount to torture, and the U.N. Human Rights Commission concluded that force feeding Guantánamo prisoners amounts to torture. We also know that Bush spied on Americans

without warrants in spite of the Foreign Intelligence Surveillance Act (FISA) because he and Gonzales admitted it. And we know what water boarding is.

Some of Mukasey's testimony before the Senate Judiciary Committee should have raised red flags in the minds of Democratic Senators. Mukasey refused to reject the notion that the President can constitutionally violate FISA. He misread the Supreme Court's recent decision in *Hamdan v. Rumsfeld*, which clearly rejected Bush's claim that Common Article 3 of the Geneva Conventions doesn't protect al-Qaeda prisoners. Common Article 3 prohibits torture and cruel or inhuman treatment of all prisoners. In fact, the *Hamdan* Court referred to possible liability under the U.S. War Crimes Act for those who violate Common Article 3. And when asked about contempt charges against witnesses who refuse to respond to congressional subpoenas, Mukasey said he would refuse to follow the statute that requires a U.S. attorney to refer contempt citations to a grand jury.

Nonetheless, Mukasey appears to be a shoo-in, with the Senate proceedings resembling a charade. One month before Mukasey was tapped by Bush for AG, the former federal judge penned an op-ed in the *Wall Street Journal* complaining about too much due process in terrorism prosecutions and advocating special courts where the Constitution wouldn't get in the way of catching the bad guys.

Mukasey's excessive zeal for Bush's war on terror was evident right after 9/11. In an October 2, 2001 hearing in his court, then-Judge Mukasey dismissed attorney Randall Hamud's claim that his client, 21-year-old Jordanian Osama Awadallah, had been physically beaten while in custody and had the marks to prove it. Mukasey retorted, "As far as the claim he was beaten, I will tell you he looks fine to me." The judge then refused to direct that Awadallah be examined by a doctor, and ordered that he be held indefinitely. The marks were under Awadallah's clothing. He was one of the more than 1,000 men of Arab descent rounded up after 9/11, and later exonerated. Many suffered similar abuse while in U.S. custody. Ronald Kuby was a defense attorney in the 1995 Omar Abdel Rahman case, over which Mukasey presided. Mukasey "was violating the rights of Arabs before it was popular," Kuby said. "It was very much like trying a case with two prosecutors, one of whom was wearing a black robe."

After librarians complained about the USA Patriot Act's provision that required them to tell the government what books we read, Mukasey mocked them in a *Wall Street Journal* op-ed. He described civil liberties concerns as "recreational hysteria."

Although former Judge Mukasey ruled Jose Padilla had the right to consult with counsel, he held that the President has the power to detain U.S. citizens caught on U.S. soil without charging them with a crime. When Sen. Dianne Feinstein questioned him, Mukasey incorrectly cited *Hamdi v. Rumsfeld* to support his position. *Hamdi*, unlike Padilla, was captured on the battlefield in Afghanistan, and the high court held that even *Hamdi* was entitled to some basic due process. In response to Feinstein's question about whether Congress has the right to set boundaries on military action under Article I of the Constitution, Mukasey demurred, arguing his "learning curve" was "steep."

Mukasey ducked the question of whether he would advise the President to allow unlawful enemy combatants habeas corpus rights at Guantánamo Bay. "I would not advise the President to grant rights beyond those that they already have," he told Sen. Lindsey Graham. In spite of the Military Commissions Act, which purports to deny these people

statutory habeas rights, the Supreme Court will likely decide this term that they still have the constitutional right to habeas corpus.

At the committee hearing on Wednesday, Mukasey was introduced by his dear friend and law school buddy Joe Lieberman. No one is fanning the flames of war against Iran more than Lieberman. Bush/Cheney likely see Mukasey as a reliable ally who will help “legitimize” their impending illegal attack on Iran .

When Bush nominated Mukasey for attorney general, he declared Mukasey would “ensure that our law enforcement and intelligence officers have the tools they need to protect the United States and our citizens.” Mukasey, who refused to call water boarding torture, will likely support that “tool” in the war on terror. Mukasey told senators in advance of his hearing that he supports enhanced interrogation techniques, according to Newsweek’s Michael Isikoff.

Michael Mukasey cannot be counted on to independently investigate the crimes of the White House. Elizabeth Holtzman, a former congresswoman who served on the House Judiciary Committee during the Nixon impeachment, advocated in a recent op-ed in the Progressive that the Senate should confirm Muksey only if he pledges to appoint a special prosecutor to investigate the Bush administration. That’s what the Democratically-controlled Congress did in 1973 after Nixon nominated Elliot Richardson for attorney general. Richardson agreed, he was confirmed, and then appointed Archibald Cox as special prosecutor. Cox’s investigations and summary dismissal resulted in the issuance of articles of impeachment against Nixon in the House Judiciary Committee followed by Nixon’s resignation. It would be wonderful to have a Congress that once again stood up to the President when he breaks the law.

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