

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business until 3:15 p.m., with Senators permitted to speak for up to 10 minutes each.

The Senator from Maryland.

NOMINATION OF MICHAEL
MUKASEY

Mr. CARDIN. Mr. President, I have the honor of serving on our Judiciary Committee, which is charged with the responsibility of recommending to this full body whether to confirm Judge Mukasey as the next Attorney General of the United States. In that capacity I have had the chance to sit through the confirmation hearings at which Judge Mukasey testified before our committee for 2 days. I chaired the third panel of independent witnesses and had a chance to question national experts in regard to the issues that I think are important and that must be met by our next Attorney General. I had the opportunity to personally meet with Judge Mukasey in my office to go over the priorities of the Department of Justice and how he would try to reverse some of the problems in that Department. I had the chance to specifically ask written questions to the nominee and got responses on those written questions.

I must tell you, first, I do believe Judge Mukasey is an honorable person. He has a distinguished record of public service, and he would represent a refreshing change within the Department of Justice. He has the ability to restore morale and traditional professionalism, particularly among the career attorneys at the Department of Justice.

But one of the critical issues in evaluating who should be our next Attorney General is whether that individual will exercise the independence that is so required by the Attorney General of the United States; in short, whether he will represent the people of our Nation and not just the President of the United States.

We all know the record of the former Attorney General, Alberto Gonzales. We know about how partisan politics interfered with the selection and promotion of career attorneys at the Department of Justice. We all now know the story of the firing of the U.S. attorneys and how it appears that partisan politics in criminal investigations—criminal investigations—may have interfered with the operation of the Department of Justice. So independence is a critically important factor in the next person to be the Attorney General of the United States.

Because of Judge Mukasey's response to the questions relating to waterboarding, I have concern about his independence. Judge Mukasey refused to say that waterboarding is torture. In reply to questions that were

asked, he responded that he would use independent judgment as to what constitutes torture. He said he would prosecute anyone who violated our laws. He said, in fact, if his views conflicted with those of the President of the United States in a fundamental way, and if he were unable to reconcile those differences, he would leave the office rather than compromise his views.

Let me read three questions I asked of the Attorney General nominee. I asked: As Attorney General, would you order the Justice Department to prosecute individuals who, under 18 U.S.C 2340 and 2340(a), committed acts of torture?

Judge Mukasey's answer:

The Department of Justice has an obligation to bring prosecutions to enforce all valid criminal statutes and, as I explained during the hearing, torture is prohibited by federal law.

I then asked the nominee: Do you believe that any "exceptional circumstances" exist that would justify torture?

His answer was no.

I then asked: As Attorney General, would you authorize the use of torture in any circumstance?

Once again, his answer was no.

I cannot understand why Judge Mukasey will not tell us clearly that waterboarding is illegal under our laws. The fact that he leaves open that waterboarding could be permitted as an interrogation technique has me very concerned.

Judge Mukasey now acknowledges he understands what is generally meant by waterboarding. I gave him the benefit of the doubt during the hearing. He said: I am not familiar with the technique.

That is difficult to understand but—OK. He then had time to reflect and learn about waterboarding as generally understood, waterboarding that has been condemned for literally hundreds of years—since the Spanish Inquisition. He now understands what is generally meant by waterboarding. But during the confirmation hearing and in follow-up questions he would not rule out the potential use. Questions asked during the confirmation hearing did not ask about a specific technique that may have been authorized by the President for interrogating detainees. That is not what was asked. The question that was asked is about waterboarding as generally understood. It was not a hypothetical question.

Waterboarding has been condemned by the United States. The United States prosecuted Japanese soldiers for waterboarding as a war crime after World War II. We brought charges as war crimes for those who would try to use that torture technique against Americans.

In 2005, the Congress passed the McCain amendment which prohibits the use of cruel, inhumane, and degrading treatment and punishment of persons under the detention, custody, and control of the U.S. Government. We

also then required that the Army must use the field manual while interrogating detainees.

In 2006, the Army Field Manual specifically prohibited waterboarding. During our final panel of witnesses, I had a chance to question Admiral Hutson, who has a very distinguished record of service to our country—former Navy Judge Advocate General, senior uniformed legal adviser to the Secretary of the Navy and the Chief of Naval Operations. So we had a chance to talk about waterboarding. He said waterboarding is one of the most iconic examples of torture. It was devised during the Spanish Inquisition. Its use has been repudiated for centuries.

Admiral Hutson said we look to the Attorney General as our chief law enforcement officer. He has to be absolutely unequivocal as to what torture is and is not. We need clarity from our principal leaders.

So it appears to me that Judge Mukasey was yielding to the White House pressure on waterboarding in answering the questions of our committee. I find that very troubling. I am looking for an Attorney General who will exercise independent judgment as to what the law of our country is, and that no one is above our law.

On November 1, 2007, President Bush implied if Judge Mukasey answered the questions on waterboarding, he would give "terrorists a window into which techniques we may use and which ones we may not use." I want the President of the United States and the Attorney General of the United States to tell the world, unequivocally, that the United States will not permit the use of torture. I am not clear about the President. We all remember his signing statements to the McCain amendment, which leaves questions as to whether torture could be allowed under some circumstances. Now we are not clear, with Judge Mukasey's answers, as to whether waterboarding could be permitted under some circumstances as a form of torture.

I think it is absolutely clear our leaders must make it apparent to all the United States will not use torture, nor will it ever tolerate any other country using torture or any individuals using torture against an American. If a foreign agent attempts to use waterboarding, as it is generally understood, or any other form of torture against an American, I want our country to use every means at its disposal to hold that offender accountable.

On November 1 the President also said Judge Mukasey could not "go on the record about the details of a classified program he has not been briefed on." I agree with the President of the United States. Judge Mukasey was not asked about specific practices of a classified program. He was requested to give information about waterboarding as generally understood. He had an obligation to answer that question.

The 9/11 Commission, in one of its recommendations to Congress, said the