



November 5, 2007

Senator Patrick Leahy
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

Common Cause believes that it would be a serious mistake for the Senate Judiciary Committee to confirm Judge Michael Mukasey's nomination as attorney general to replace Alberto Gonzales.

In his nomination hearings before the Senate Judiciary Committee, Judge Mukasey provided evasive answers to critical questions about whether "waterboarding" is torture, feigning ignorance of the well-known procedure and dodging the question when it was defined for him.

An attorney general's first job is to protect the rule of law, not to protect a President. We have just seen the damage caused when an attorney general places partisan loyalty above law. The country cannot withstand more of such disregard for the rule of law.

As the Committee knows – and now the American public knows too well – waterboarding has been an infamous form of torture dating back as far as the Spanish Inquisition. The United States has both prosecuted waterboarding as a war crime when used against our soldiers and court marshaled a U.S. military officer who used it against our enemies, George Washington University Professor Jonathan Turley wrote last week.

Senator Charles Schumer (D-NY) stated that in conversations with Judge Mukasey as late as Friday, Judge Mukasey assured him that Congress could pass a law banning waterboarding and other forms of torture and the President would have absolutely no authority to ignore such a law. But, under the Geneva Convention, adopted by the United States as law, it is already against the law to use waterboarding.

Judge Mukasey's disingenuous responses about torture shows a contempt for Congress and a disturbing willingness to turn his back on the law when the alternative –

acknowledging illegal torture – could have troubling implications for the President who nominated him.

This is unacceptable from a nominee to America’s top law enforcement position. And it is equally unacceptable for the United States Congress to turn its back on its constitutional duty.

Judge Mukasey’s non-answers on torture do not stand alone. We are equally concerned about his equivocations on the President’s power to conduct a secret program of warrantless wiretapping, despite laws duly enacted by Congress and protections afforded to all Americans by the Constitution.

It is the hope of the nation that a new attorney general will be a fresh start for the Justice Department that Gonzales tarnished through his partisanship and left in tatters. That hope cannot be served by a nominee who begins by dissembling over what the law is in order to protect the Administration and the Justice Department from possible unpleasant ramifications even before he has been confirmed. It is difficult to see how such a nominee could repair the integrity and reputation of the Justice Department, heighten sagging morale or stem the exodus of career professionals fleeing that agency.

Common Cause believes this is one of the most urgent issues of our day: a President who usurps greater and greater powers without regard for the law or Constitution, and a Congress that stands idly by and lets it happen. Common Cause took a stand when the actions of President Nixon threatened to unravel America’s democracy, and we take the same stand now.

The American people are watching what you do this week. The whole world is watching. We need you to demand respect for the rule of law, the Constitution, and the role of the United States as a reliable world partner dedicated to international justice. It is up to you to restore voters’ confidence in the vitality of America’s democracy. And it is up to you to safeguard our troops abroad, who become more vulnerable to torture when we condone it.

Common Cause urges you to stand firm and vote against the confirmation of Judge Mukasey as our next attorney general. We urge you to turn the tide on abuse of executive power and show America that they can depend on you to defend the Constitution and the rule of law.

Sincerely,

A handwritten signature in black ink that reads "Bob Edgar". The signature is written in a cursive, flowing style.

Bob Edgar
President and CEO