

The Honorable Benjamin L. Cardin

United States Senator
Maryland
October 17, 2007

OPENING STATEMENT OF
SENATOR BENJAMIN L. CARDIN
ON THE NOMINATION OF MICHAEL MUKASEY
TO BE ATTORNEY GENERAL OF THE UNITED STATES
SENATE JUDICIARY COMMITTEE
October 17, 2007

Chairman Leahy, thank you for calling this important hearing today of the Judiciary Committee to consider the nomination of Michael Mukasey to be the 81st Attorney General of the United States.

I had the privilege of meeting with Judge Mukasey several weeks ago in my office. Judge, it is good to see you again here today as you begin your confirmation hearing.

Judge Mukasey knows that my primary concern during his confirmation hearing will be his commitment to restore leadership, professionalism, and independence to the Department of Justice. Your predecessor, Attorney General Alberto Gonzales, no longer had the credibility and independence to perform his job effectively and therefore could no longer work with Congress and be trusted by the American people.

I cannot stress enough to you, Judge Mukasey that this Senator and this Committee want you to succeed. I hope you agree that to do that both Congress and the courts must be equal partners with you, as you strive to enforce the law and protect the cherished civil rights and liberties of all Americans under our Constitution. Our Constitution wisely sets up a system of checks and balances and separation of powers, the so-called "boring part" of the Constitution that Judge Mukasey has referenced in many of his speeches. I am hopeful that some of your independence as a federal judge, when you had lifetime tenure, will transfer with you to the Department of Justice should you be confirmed. As Attorney General of the United States you are the people's lawyer, not the lawyer for the President or a political official in the White House.

Let me just outline a few of the concerns I have had with the Department of Justice under President Bush. In particular, I want to ensure the Justice Department regains its historically strong commitment to civil rights enforcement, including renewed attention in the areas of voting rights and employment and housing discrimination. In the area of voting rights, Judge Mukasey, you are aware of my particular interest in combating despicable campaign tactics used to deliberately disenfranchise minority voters, by distributing campaign materials with incorrect dates for Election Day, threatening voters with arrest if they have unpaid parking tickets or taxes, and threatening naturalized citizens with incarceration. I have joined with Senators Obama and Schumer to introduce legislation to criminalize these practices, which our Committee recently approved and the House of Representatives has passed.

I know of your particular interest and work on the issue of religious freedom and anti-Semitism through the National Conference on Soviet Jewry (NCSJ) and the Anti-Defamation League of B'nai B'rith in the 1980's. I myself have been active in working with NCSJ. In Congress I have been active as a member of the U.S. Helsinki Commission and as a U.S. delegate to the Organization for Security and Cooperation in Europe (OSCE). Over many years I have worked with our European allies to combat racism, xenophobia and anti-Semitism, and to learn and share best practices in terms of educating our youth on the importance of diversity and in strongly condemning and prosecuting hate crimes based on religion, race, nationality, or other protected categories.

I mention this issue, Judge Mukasey, because just yesterday House Judiciary Committee Chairman John Conyers held an interesting and thoughtful hearing on the Louisiana case of the Jena-6, and more broadly asked the question of what the proper role is for the federal government in hate crimes and race-related violence in public schools. I would appreciate hearing your views on this issue, as the United States seems to be experiencing a dramatic rise in the number of hate crimes, most disturbingly by the hanging of nooses in educational institutions.

I also look forward to hearing your views on the war on terrorism, including issues of torture, Guantanamo Bay, military commissions, and your suggestion to create special national security courts to try accused terrorists. I am pleased that Chairman Leahy has created, in this Congress, a new Subcommittee on Human Rights and the Law, on which I am proud to serve with subcommittee chairman Durbin. The subcommittee has continued to examine the compliance of the United States with international law and human rights standards, and I am increasingly concerned that we are continuing to alienate our allies in the war on terrorism by violating the very standards we have agreed to uphold in the United States. The Supreme Court has rebuffed the Bush Administration on several occasions for the indefinite detention without charge or fair trial of accused terrorists held for years in Guantanamo Bay.

We should heed the recommendation of the 9/11 Commission that "the United States should engage its friends to develop a common coalition approach toward the detention and humane treatment of captured terrorists. New principles might draw upon Article 3 of the Geneva Conventions on the law of armed conflict. That article was specifically designed for those cases in which the usual laws of war did not apply. Its minimum standards are generally accepted throughout the world as customary international law."

I mention this in some detail, Judge Mukasey, because of the repeated disclosure of classified directives and other memoranda which suggest that the Bush Administration has continued to authorize the use of torture to interrogate terrorism suspects, notwithstanding the McCain legislation signed by President Bush that bans such practices. Torture is not only ineffective and harmful to the diplomatic and political alliances we need around the world to fight terrorism, but the use of torture by the United States puts the men and women in greater danger of mistreatment when captured by our enemies abroad. If confirmed as Attorney General you will oversee the Office of Legal Counsel (OLC), and I would urge you to make any classified opinions regarding the use of torture available for review by this Committee in a closed session.

I also look forward to hearing your views on the Foreign Intelligence Surveillance Act (FISA), and the President's authorization to conduct warrantless eavesdropping without approval from Congress or the FISA Court. I voted against the Protect America Act because it weakened the ability of Congress and the FISA court to review electronic intelligence gathering that may target Americans. The FISA court was established in 1978 because of executive branch abuses in domestic intelligence gathering. As you know, the legislation sunsets in February, and one of your most important responsibilities should you be confirmed as Attorney General will be to work with Congress and the FISA Court to come up with a better legal framework and guidelines to carefully oversee this type of surveillance. We must uphold our oaths to the Constitution and strike a proper balance in fighting terrorism that still protects the fundamental rights and protections enjoyed by Americans. I look forward to your cooperation with this Committee's ongoing investigation into the President's program.

Thank you again Mr. Chairman for holding the hearing today, and I look forward to hearing from the witness today. I am also pleased that you have asked me to chair the hearing during the third panel of witnesses on the nomination of the Attorney General. I look forward to questioning these additional witnesses about the nominee and the steps needed to restore the integrity and independence the Justice Department, repair the morale of its employees, and regain the confidence and trust of the American people that the Department will enforce the rule of law with regard to politics.