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## Mukasey Calls Harsh Interrogation 'Repugnant'



Susan Etheridge for The New York Times

Michael B. Mukasey, nominee for attorney general, testified for a second day on Oct. 18.

By [SCOTT SHANE](#)  
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WASHINGTON, Oct. 30 — In an effort to quell growing doubts in the Senate about his nomination as attorney general, [Michael B. Mukasey](#) declared Tuesday that waterboarding and other harsh interrogation techniques “seem over the line or, on a personal basis, repugnant to me” and promised to review the legality of such methods if confirmed.

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But Mr. Mukasey told Senate Democrats he could not say whether waterboarding, which simulates drowning, was illegal torture because he had not been briefed on the details of the classified technique and did not want to suggest that [Central Intelligence Agency](#) officers who had used such techniques might be in “personal legal jeopardy.”

It was unclear whether the answers would be enough to win endorsement from the Senate Judiciary Committee, where the torture issue has threatened to block the confirmation of Mr. Mukasey, who served for 18 years as a federal judge in New York.

Mr. Mukasey gave his answer in a four-page letter delivered Tuesday afternoon to Senator [Patrick J. Leahy](#), chairman of the committee, and the other nine Democrats on it.

Mr. Mukasey noted that Congress has not explicitly banned waterboarding by the C.I.A., though it was outlawed for use by the military in the Detainee Treatment Act of 2005. That left room for interpretation as to whether waterboarding or any other technique is prohibited as “cruel, inhuman or degrading” treatment, he wrote.

“Legal questions must be answered based solely on the actual facts, circumstances and legal

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standards presented," he wrote.

In the absence of knowing exactly how specific classified interrogation techniques have been used, Mr. Mukasey continued, he did not want to offer legal opinions on "hypotheticals."

All 10 Democrats on the committee wrote to Mr. Mukasey last week asking that he clarify his position on waterboarding. "Your unwillingness to state that waterboarding is illegal may place Americans at risk of being subject to this abusive technique," they wrote.

The initial response from committee Democrats on Tuesday night suggested that Mr. Mukasey had not assuaged their concerns.

"I remain very concerned that Judge Mukasey finds himself unable to state unequivocally that waterboarding is illegal and below the standards and values of the United States," Mr. Leahy, of Vermont, said in a statement.

He said he would consider Mr. Mukasey's written answers to other questions and consult other committee members before scheduling a vote on the nomination.

Another Democrat, Senator [Richard J. Durbin](#) of Illinois, said Mr. Mukasey had "spent four pages responding and still didn't provide an answer" to the question, "Is waterboarding illegal?"

"Judge Mukasey makes the point that in the law, precision matters," Mr. Durbin said. "So do honesty and openness. And on those counts, he falls far short."

A Republican on the committee, Senator [Lindsey Graham](#) of South Carolina, praised Mr. Mukasey's response, saying: "I think Judge Mukasey did himself some good with this letter. He helped his cause with me."

But Mr. Graham, a former military lawyer who has said he believes that waterboarding is unquestionably torture, said he had "a couple of areas that I want to flesh out" before committing to vote in favor of confirmation.

The committee is scheduled to meet Thursday, but a vote at that time looked unlikely Tuesday night. An aide to Mr. Leahy said the committee was still waiting for what were expected to be Mr. Mukasey's voluminous written replies on a variety of subjects, including things like civil rights and antitrust law.

Mr. Mukasey, named by President Bush on Sept. 17 as his choice to succeed the much-criticized [Alberto R. Gonzales](#) as attorney general, was initially expected to face an easy confirmation. His name had been suggested by a Democrat, Senator [Charles E. Schumer](#) of New York.

But his equivocation at his Senate confirmation hearing on the question of whether waterboarding is torture, and his assertion that the president's constitutional powers can sometimes trump a particular law, drew sharp criticism from Democrats and human rights groups.

Waterboarding involves strapping a prisoner to a board, covering his face with cloth and pouring water over the cloth to produce a feeling of suffocation. Variations of the technique, designed to give a prisoner a feeling of imminent drowning, have been used for centuries.

The C.I.A. used waterboarding against some high-level operatives of [Al Qaeda](#) at secret overseas sites, and it emerged as a symbol of the Bush administration's embrace of harsh physical pressure in interrogation.

Gen. [Michael V. Hayden](#), the C.I.A. director, has said in recent speeches that of about 100 Qaeda suspects held since 2002 at the agency's secret jails, harsh interrogation techniques were used on fewer than one-third. A knowledgeable official said on Tuesday that waterboarding was used on three prisoners, the last time in 2003.

In still-secret legal opinions in 2005, the Justice Department ruled that even the toughest C.I.A. techniques, including waterboarding, were legal.

Pressed about waterboarding by Senator Sheldon Whitehouse, Democrat of Rhode Island, on the

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second day of his confirmation hearing, Mr. Mukasey replied, "I don't know what is involved in the technique."

That reply did not satisfy some senators, who noted that the technique had been widely described in the press. Four Democratic senators who are running for president, [Hillary Rodham Clinton](#), [Barack Obama](#), [Joseph R. Biden Jr.](#) and [Christopher J. Dodd](#), said this week that they would not support Mr. Mukasey based on his initial testimony on waterboarding.

Waterboarding has also been a flash point among Republican presidential candidates. Last week, after [Rudolph W. Giuliani](#), the former New York mayor, said he was not sure about waterboarding because he thought "the liberal media" might not have described it properly, Senator [John McCain](#) of Arizona, who was tortured as a prisoner in North Vietnam, shot back, saying it was a torture method used since the Spanish Inquisition.

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