

Schumer in tough spot as Dem opposition to Mukasey grows

By Manu Raju

Democratic attacks on Attorney General nominee Michael Mukasey are putting Sen. Charles Schumer (D-N.Y.) in an increasingly difficult position.

With a Senate Judiciary Committee vote on Mukasey now set for Nov. 6, Schumer finds himself a potential swing vote on Mukasey's confirmation, torn between his support for a fellow New Yorker and allegiance to his conference, which has stepped up attacks on Mukasey for refusing to state that waterboarding constitutes torture.

All of the Senate's Democratic presidential candidates are opposing Mukasey, and members of the Democratic leadership have so far withheld their support.

Schumer has been unusually mum about the former district court judge, whom he recommended to succeed former Attorney General Alberto Gonzales, and on Wednesday avoided answering how he would vote on Mukasey.

At a briefing at the headquarters of the Democratic Senatorial Campaign Committee, which Schumer heads, he acknowledged that there was anticipation to hear his views, but said, "I'm not going to comment on Judge Mukasey here."

Schumer's spokesman did not return a phone call seeking comment.

Schumer's recent silence on Mukasey underlines the tough position facing Democrats and some of their allies off of Capitol Hill. They must decide whether to unite and derail the nominee — risking having Bush nominate or recess appoint an even more controversial replacement for Gonzales — or allow the nominee to go forward to restore sorely lacking leadership at the Justice Department, despite his position on waterboarding, which simulates drowning.

Critics say that if he does not consider waterboarding torture, the practice will persist in violation of international and domestic laws. Mukasey has condemned the practice but has said he cannot determine whether or not it constitutes torture because he has not been briefed on the details of U.S. interrogation techniques.

Schumer isn't the only Judiciary Committee Democrat weighing



GETTY IMAGES

Attorney general nominee Michael Mukasey

the nomination with care. Sen. Herb Kohl (Wis.) said he is still reviewing Mukasey, and Sen. Diane Feinstein (Calif.) would not comment Wednesday. Feinstein is viewed as a potential swing vote after she joined all committee Republicans in August in voting for the controversial appeals court nominee Leslie Southwick.

Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), who Tuesday said he was "very concerned" about Mukasey's comments on waterboarding, said he has not made up his mind and will review all the nominee's written responses this weekend at his farm in Vermont.

"I have not taken a position one way or another," Leahy said.

Sen. Sheldon Whitehouse (R.I.) said he is "deeply torn," but added that he would oppose Mukasey.

Sen. Arlen Specter (Pa.), the influential ranking Republican, also said he has not made up his mind, though he signaled he is leaning towards supporting Mukasey. At a hearing on Wednesday, Specter

said he did not know "how much more [Mukasey] can say than what he said."

Specter added that there is "no doubt the confirmation is at risk... because he has not answered the question [of waterboarding] categorically."

But no other Democrat is as invested in Mukasey as Schumer, who has repeatedly praised Bush's choice ever since he was nominated for the post on Sept. 17. The day after Mukasey's nomination, Schumer held a news conference, saying that he had "tough questions for Mukasey," before adding that the judge had a "reputation for integrity and that is the most important thing right now."

On the second day of the confirmation hearings on Oct. 18, after Mukasey declined to state whether waterboarding constitutes torture, Schumer asked Mukasey to brief him on a study "should you become attorney general — and as you know, I hope you will be."

Schumer's comments carried

particular resonance since he was one of the leading congressional critics of Gonzales.

Republicans, outraged by what they say are unfair political attacks on a nominee whom Democrats initially supported, are not about to let Democrats forget Schumer's comments.

"Senator Schumer noted that Judge Mukasey and the others he recommended — and I'm quoting him now — 'were legally excellent, ideologically moderate, within the mainstream and have demonstrated a commitment to the rule of law,'" Judiciary Committee Republican Jon Kyl (Ariz.) said on the floor Wednesday.

Minority Leader Mitch McConnell (R-Ky.) did not actually use Schumer's name in his floor speech Wednesday, but quoted the senior senator from an April interview with Fox News where he made favorable comments on the possibility of Mukasey as an attorney general.

"Our Democratic colleagues said that if, instead, the president were to nominate a... conservative... like a Mike Mukasey, he 'would get through the Senate very, very quickly,'" McConnell said. "Well, the president did not nominate someone 'like' Mike Mukasey; he nominated Mike Mukasey himself. And he received widespread acclaim for doing so."

Liberal groups, for the most part, have not jumped into the debate. Tanya Clay House, director of public policy for the People for the American Way, said her group has concerns, but is not taking a position. The influential advocacy group MoveOn.org declined to comment.

But the group Human Rights Watch has called on the Judiciary Committee to reject the nomination.

Aaron Blake contributed to this report.

CORRECTION

The Air Force did not formally vet Pentagon appeals language on a Senate provision about unmanned aerial vehicles. Nor has it distributed new documents on Capitol Hill explaining why it should control these drones. Inaccurate information appeared in Tuesday's paper.

BRIEFLY

CLINTON SKIPS SENATE HEARING SHE CALLED FOR

Sen. Hillary Rodham Clinton (D-N.Y.) skipped an Environment and Public Works Committee hearing Wednesday that she called for earlier this year.

Clinton's absence drew a strong rebuke from Sen. James Inhofe (Okla.), ranking Republican on the Environment and Public Works Committee.

Clinton, a member of the committee, praised Sen. Barbara Boxer (D-Calif.) a few weeks ago for scheduling the hearing on the proposed Yucca Mountain nuclear waste repository in Nevada, a project that many Nevada voters oppose fiercely.

"I applaud Chairman Boxer for scheduling this important hearing, a step that I called for earlier this year," she said. "I am strongly opposed to Yucca Mountain because there are too many unanswered questions about both the geology of the site and the integrity of the science done to support the decision to store waste there."

"That's why this hearing is so important. We need answers... and I will be asking for them on the 31st," Clinton added.

But if Clinton was seeking answers from administration officials, she was not doing it from the committee dais. She was nowhere to be seen at Wednesday's hearing.

Inhofe did not mince words about Clinton's absence: "When Sen. Clinton had the opportunity to ask 'hard questions' of administration officials about Yucca Mountain, she was missing in action. In fact, Sen. Clinton failed to ask any questions because she was absent from the last two [Environment and Public Works] hearings on Yucca Mountain."

Sen. Barack Obama (Ill.), Clinton's chief rival for the Democratic presidential nomination, however, made sure to weigh in on the hearing. He penned a letter to Boxer dated Oct. 30 stating his opposition to the Yucca project.

Obama is not a member of the Environment and Public Works Committee.

"I believe that it is no longer a sustainable federal policy for Yucca Mountain to be considered as a permanent repository," Obama wrote.

Nevada voters are of particular interest to the Democratic hopefuls because the state is scheduled to hold a presidential caucus on Jan. 19.

Clinton's Senate spokesman did not respond to a request for comment.

Alexander Bolton