

BUSH AND SCHUMER

David Kurtz reports that the Mukasey nomination will come down to the Senate Judiciary Committee vote (and TPM is tracking votes so far). I believe this sets up some really interesting tension between Bush and Chuck Schumer.

You see, events thus far have made it very important for Bush to get Mukasey approved. While David Addington may have thought it in Bush's best interest to push Mukasey to adopt the party line, they're now at the place where, if Mukasey is rejected, it will be because of Bush's torture policy. (Frankly, this is unfortunate from a principled perspective, since it means that the Senators don't care about the unitary executive more generally, but it works to our advantage politically.) The press has spun the rising tension to be entirely about the issue of torture, which makes it inconceivable that, if Mukasey is rejected, the narrative will be anything but torture. Which will shine a bright light on the torture policy itself, and some Soccer Moms who might otherwise be ignorant that men are being tortured in their names may just discover that their government is doing reprehensible things.

Which is why Bush is so pissy about the doubts about Mukasey's appointment.

President Bush today sought to ratchet up pressure on Senate Democrats considering his nomination of Michael B. Mukasey to be attorney general, saying that it was unfair and unwise of lawmakers to require the nominee to opine on details of a classified interrogation program.

Bush, in his most forceful remarks to date on the troubled nomination, strongly defended Mukasey for refusing to say whether he believed that coercive interrogation techniques, including waterboarding, were illegal torture. The

issue has become the defining question for Senate Democrats in advance of Tuesday's Senate Judiciary Committee vote on whether to confirm the retired federal judge to succeed Alberto R. Gonzales.

[snip]

Bush today said it was wrong of Democrats to make the confirmation dependent upon "details of a classified program he has not been briefed on."

Though his temper tantrum is only going to make it worse—it's going to make a Mukasey vote an upperdown vote on torture.

Unfortunately, I'm still pessimistic it'll go the way we'd like.

That's partly because DiFi pretty consistently disappoints Democrats at times like these.

But it's also because of the underlying tension regarding Chuck Schumer's role in this whole process. Chuck Schumer, of course, suggested Mukasey's name in the first place—Mukasey was Schumer's nominee first, and Bush's only afterwards. Which will make it very difficult for him to vote against Mukasey, not least because he no doubt represented to the White House that Mukasey—unlike Ted Olson and Laurence Silberman—would be confirmed. For now, Schumer's not showing his hand.

Most conspicuously silent was Mukasey's fellow New Yorker, Charles E. Schumer, who initially offered unusually warm praise for the nominee and did not come out against him this week as other Democrats attacked. Asked Wednesday about the nomination, Schumer would say only, "I'm reading the letter, going over it."

But Schumer is a natural deal-maker. He's in the

position where his role as dealmaker on judicial nominations will be in question if Mukasey is rejected. I suspect he's as troubled by Mukasey's head fake on torture as the other Senators (indeed, I suspect he'd be more concerned about the unitary executive issues than some other Senators). But he's also got his own honor at stake.

Let's hope he lets the Constitution trump his honor, just this once.