



## The Second Test

Judge Michael B. Mukasey won Senate confirmation to be Attorney General largely because, in the wake of the politicization of the Justice Department, he assured Senators that he would resign if President Bush ignores or violates the law.

His first test of that promise will come Wednesday, January 30, during an oversight hearing by the Senate Judiciary Committee.

The hearing undoubtedly will revisit Mukasey's vague answers about what constitutes torture, an issue that almost derailed his confirmation. The United States considered torture illegal until Mukasey's predecessor, Attorney General Alberto Gonzales, greenlighted its use for the Bush Administration after 9/11.

But a second test – and one with far-reaching impact for the civil rights of ordinary Americans – will be his response to senators' questions about what happened to the U.S. Civil Rights Commission during Gonzalez' tenure.

The 50-year old independent, eight-member commission – established by the first Civil Rights Act in 1957 – was set up to issue subpoenas and hold fact-gathering hearings about civil rights enforcement and to recommend remedies to Congress. By law, the U.S. Civil Rights Commission can't have more than four members from the same party. **(See Exhibit A).**

But in 2004, President Bush used a controversial maneuver to appoint two new Republicans to the panel – replacing two Democratic appointees whose terms were up – even though three of the eight members were already Republicans.

How? One of the Republican members, Abigail Thernstrom, re-registered as an Independent just six weeks before the two new Republican appointments were made. Thernstrom eventually re-registered as a Republican, and was then joined on the Commission, in an Independent slot, by Gail Heriot, a former local RNC official.

The Justice Department's Office of Legal Counsel – the same office which, under Gonzalez, condoned torture and wiretapping without warrants – ruled that the appointments were legal since the newly minted independents no longer counted towards the four-member Republican party cap. **(See Exhibit B).**

The non-partisan Congressional Research Service deemed this blatant political maneuver to be contrary to the intent of the law that established the Commission.

The impact was immediate, turning the commission's mandate on its head.



- Instead of investigating claims of civil rights violations, the commission questioned the *raison d'être* for programs designed to offset the historic effects of discrimination.
- The commission's four Republicans and two "hidden" Republicans tabled an evaluation of a White House budget request for civil rights enforcement, the adequacy of college financial aid for minorities, and whether the U.S. Census Bureau undercounted minorities, keeping non-white areas from their fair share of political apportionment and spending.

If Attorney General Mukasey was sincere in his assurances, then one of the first things he should do is to overturn the Legal Counsel's decision and restore the integrity of the U.S. Civil Rights Commission. If he's not willing to do this then he should be a man of his word and resign.