

**Questions for the Record to Judge Michael B. Mukasey
From Senator Charles E. Schumer**

1. You assured me in our private interview and at your confirmation hearing that you will undertake a review of existing Office of Legal Counsel opinions if you are confirmed. In particular, you agreed to review and re-examine legal opinions relating to the Terrorist Surveillance Program, detention, interrogation, and torture.
 - i. If confirmed, do you pledge not only to review any operative legal opinions, but also to correct and/or withdraw any that you find are problematic?
 - ii. If confirmed, do you commit to telling Congress and otherwise publicly announcing when you have completed your review of operative OLC opinions?
 - iii. If confirmed, do you commit to disclosing to Congress and otherwise publicly announcing whether you have directed that any OLC opinion be corrected and/or withdrawn?

2. At your confirmation hearing, you stated that you would review the Administration's legal justification for its assertion of executive privilege with respect to Congress's investigation into the firing of nine United States Attorneys. Although you testified that you had not had the opportunity to carefully read Solicitor General Paul Clement's written opinion in support of the invocation of privilege, you did say that the section of the opinion relating to third-party communications with the White House caused you to wonder, "Huh?"
 - i. If confirmed, do you commit to reviewing the legal bases for the Administration's assertion of executive privilege in this matter within 30 days of taking office?
 - ii. Do you commit, after your review, to providing your own opinion on the matter to Congress?

3. At our first meeting, I asked you about the Inspector General's upcoming report on the conduct of the Attorney General and other matters related to the firing of United States Attorneys. I asked you whether, if you are confirmed and the Inspector General makes a criminal referral, your Department will bring a criminal case. You assured me that you will review it carefully and if there is a case to be brought, you will absolutely bring it.
 - i. Do you stand by that commitment?

4. There was wide concern when President Bush's Justice Department put political appointees instead of career attorneys in charge of hiring for the Department's prestigious summer law clerk and Honors Attorney programs. In April, the Department put hiring back in the hands of career officials.
 - i. Do you commit to leaving career attorneys in charge of making these new hires, and do you commit to reexamining the hiring process and establishing any new safeguards needed to ensure that hiring for career attorneys is not governed by partisan or ideological considerations?
5. Currently, both the Office of Professional Responsibility and the Office of the Inspector General are investigating whether political considerations were taken into account in hiring decisions by the Department of Justice's Civil Rights Division.
 - i. Do you commit to cooperating fully with this investigation?
 - ii. Following the conclusion of this investigation, do you pledge to make any changes necessary to ensure that political or partisan considerations do not taint hiring decisions?
6. Since late 2004, the Civil Rights Division and other Justice Department components have been required to assist with an overload of deportation cases that have consumed up to 60% of appellate dockets. I am concerned that this immigration backlog is weakening civil rights enforcement. Immigration enforcement is very important, but setting law enforcement priorities should not be a zero-sum game.
 - i. If you are confirmed, will you commit to reviewing this situation and giving Congress (a) an estimate of when the immigration backlog will clear and/or (b) a request for whatever additional authority or resources are needed to ensure that immigration prosecutors can handle deportation cases without tying up other divisions of the Department?
7. In recent elections, we have seen many despicable attempts to spread false information to voters. These misinformation campaigns are clear efforts to confuse or frighten voters and prevent them from getting to the polls. Yet the Justice Department has few tools to combat these practices because it is not a federal crime to lie to voters about basic election-related facts such as voter eligibility rules or the time and place of an election.
 - i. Do you agree that we need to update our voter protection laws in order to give the Justice Department new tools to combat voter deception in federal elections?

- ii. Do you agree that it should be a federal crime to spread false information about basic election facts with the intent to prevent another person from voting?

- 8. As Professor Jed Rubenfeld, writing in a *New York Times* Op Ed piece, dated October 23, 2007, points out, you suggested at your hearing that the President's obligation to obey a federal statute depends on whether his authority "to defend the nation" trumps his duty to follow the law. I agree with Professor Rubenfeld that the President has no authority to disobey a Constitutional law.
 - i. Do you agree with this bedrock principle?
 - ii. Can you state directly and clearly your view of the President's authority to disregard a duly enacted and constitutional federal statute?

- 9. If you are confirmed and your Justice Department experiences serious disagreement over whether a specific law enforcement or intelligence tool is permissible under existing law, do you pledge to come to Congress to resolve the disagreement and seek a specific legal authorization for the practice in question?

- 10. If you are confirmed, and if it comes to your attention as the Attorney General that there has been any unintentional misuse or intentional abuse of new powers granted in FISA modernization legislation, do you commit to coming forward and immediately disclosing this misuse or abuse to Congress?