Senator Dick Durbin
Written Questions for Attorney General Nominee Michael Mukasey
October 25, 2007

1. When we met prior to your confirmation hearing, you told me the Geneva Conventions are "a two-way street" and suggested that our country should not comply with the Conventions if our enemies do not. During your hearing, I asked you about Common Article 3 of the Geneva Conventions. You seemed to take the position that only certain elements of Common Article 3 govern the United States' treatment of detainees. You said:

   > What part of Common Article 3 the Supreme Court found in *Hamdan* was applicable through, I believe through the Universal Code of Military Justice, unless I'm confusing my cases. I can't, as I sit here, recall precisely what part of Article 3 the Supreme Court found applicable. I thought they were talking about the need for a trial and for an opportunity for a detainee to get a hearing. I did not think that that concerned interrogation techniques.

   This seems to contradict the Administration's interpretation of the *Hamdan* decision. For example, during a Senate Judiciary Committee hearing on July 18, 2006, I asked then Attorney General Gonzales, "All U.S. personnel, including intelligence personnel, are now required, do you believe, to abide by Common Article 3 in the treatment of detainees?" In response, he said:

   > I read the [*Hamdan*] opinion, it says it applies to our conflict with Al Qaeda. … That is what it says, without qualification. … I mean, the court says, we believe, in Hamdan, that in our conflict with Al Qaeda, Common Article 3 applies.

   a. **Do you agree that Common Article 3 governs the treatment of all detainees, without qualification?**

   b. **Do you agree that all interrogation techniques used by U.S. personnel must comply with Common Article 3?**

   c. **If all interrogation techniques used by U.S. personnel must comply with Common Article 3, could enemy forces legally use all such techniques against American prisoners?**

2. As you know, the President recently issued an Executive Order interpreting Common Article 3 of the Geneva Conventions as applied to CIA detention and interrogation. The Military Commissions Act (MCA) reaffirmed the President's authority to interpret the meaning and application of the Geneva Conventions, just as he may interpret any treaty. The MCA did not grant the President the authority to redefine or narrow the Geneva Conventions. In fact, during consideration of the MCA, Congress specifically rejected the Administration's request to redefine Common Article 3.

Nonetheless, the Executive Order seems to redefine the meaning of Common Article 3 in a manner that would permit abusive interrogation techniques. Common Article 3 states that "outrages upon personal dignity, in particular humiliating and degrading treatment" are absolutely prohibited (emphasis added). The Executive Order, on the other hand, prohibits "willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the acts to be beyond the bounds of human decency" (emphasis added). In other words, humiliating and degrading treatment, which Common Article 3 absolutely prohibits, is permitted under the Executive Order as long as it is not "willful and outrageous" or a reasonable person would not consider it "beyond the bounds of human decency."

In your opinion, does the Executive Order comply with our nation's legal obligations under Common Article 3?

3. On June 19, 2007, during his confirmation hearing to be CIA General Counsel, John Rizzo was asked about the difference between the prohibition on cruel, inhuman and degrading treatment and Common Article 3 and said, "the prohibitions are actually somewhat similar. … the Due Process Clause bars interrogation techniques that 'shock the conscience.' So that would be the applicable legal standard I would say in both – in both statutes."

   Do you agree with Mr. Rizzo?

4. As I told you during your confirmation hearing, the Judge Advocates General, the highest-ranking military lawyers in each of the U.S. Armed Forces' four branches, told me unequivocally that each of the following techniques is illegal and violates Common Article 3 of the Geneva Conventions: 1) painful stress positions, 2) threatening detainees with dogs, 3) forced nudity, 4) waterboarding (i.e., simulated drowning) and 5) mock execution. On July 24, 2007, during his last appearance before the Senate Judiciary Committee, I asked Alberto Gonzales whether it would be legal for enemy forces to subject an American citizen to these same techniques. Unlike the JAGs, he equivocated, saying, "[I]t would depend on circumstances, quite frankly." For each of the five techniques named above, please respond to the following questions:

   a. **Would it be legal for enemy forces to use this technique on an American detainee?**

   b. **Would it violate Common Article 3 of the Geneva Conventions for enemy forces to use this technique on an American detainee?**

   c. **If the United States does not explicitly and publicly prohibit the five techniques named above, how can we plausibly argue that it would be illegal for enemy forces to subject Americans to such treatment?**

5. **Do you agree that it would be inappropriate for the Senate to confirm a Justice Department nominee who is under investigation by the Department's Office of Professional Responsibility?**

6. Last year, the Justice Department's Office of Professional Responsibility opened an investigation into the conduct of Justice Department attorneys who authorized the NSA program. In an unprecedented move, President Bush personally denied security clearances to the Justice Department investigators, effectively blocking the investigation. H. Marshall Jarrett, the head of OPR, has stated:

   > Since its creation some 31 years ago, OPR has conducted many highly sensitive investigations involving Executive Branch programs and has obtained access to information classified at the highest levels. In all those years OPR has never been prevented from initiating or pursuing an investigation.

   In August 2006, Senator Kennedy, Senator Feingold and I sent President Bush the attached letter asking him to allow the Justice Department internal investigation to go forward. We have not yet received a response to this letter. Please review this letter and respond to the following question.

   If you are confirmed, will you pledge to review this issue and to make a recommendation to the President regarding whether the OPR investigation of the Justice Department's role in the NSA program should be allowed to proceed?

7. I am concerned that it will be difficult for you to restore the credibility of the Justice Department without new leadership at the Office of Legal Counsel. Although he has not yet been confirmed, Steven Bradbury has been the de facto head of OLC for over two years. There are serious unresolved questions about Mr. Bradbury's role in the NSA warrantless surveillance program. During the confirmation process, Mr. Bradbury has refused to answer straightforward questions from Judiciary Committee members about torture. According to a recent article in *The New York Times*, in 2005 Mr. Bradbury signed two OLC legal opinions approving the legality of abusive interrogation techniques. On October 16, 2007, Senators Kennedy, Feingold and I sent the attached letter to President Bush urging him to withdraw the nomination of Steven Bradbury to head OLC. Please review the letter and respond to the following question.

   If you are confirmed, will you recommend that the President select a new nominee to head OLC?

8. The Justice Department has refused to provide OLC opinions regarding surveillance, interrogation techniques, and detention standards to the Judiciary Committee. When we met, I asked you about secret OLC opinions. You compared these memos to "brainstorming memos" written by your judicial clerks or congressional staff and said

you wouldn't want such memos to be made public. OLC opinions are not brainstorming memos. They are the Executive Branch's official interpretation of the law and are binding on all Executive Branch agencies.

a. Will you acknowledge that OLC opinions are different from brainstorming memos written by a judicial clerk or congressional staffer?

b. Would you agree that there should be a presumption that OLC opinions will be public unless there is some compelling national security rationale for keeping them confidential?

c. If you are confirmed, will you pledge to review personally all OLC opinions regarding surveillance, interrogation techniques, and detention standards to determine whether each of these opinions can be provided to Congress and to determine whether the legal analysis and conclusions of each of these opinions is correct?

d. In conducting this review, will you pledge to consult with career Justice Department, Defense Department and CIA attorneys with expertise in these areas?

e. If you disagree with the legal analysis and/or conclusions of any of these OLC opinions, will you pledge to rescind this opinion?

9. According to the *New York Times*, in 2005 Mr. Bradbury authored an opinion on so-called "combined effects," which authorized the CIA to use multiple abusive interrogation techniques in combination. Alberto Gonzales approved this opinion over the objections of then Deputy Attorney General Jim Comey, who said the Justice Department would be "ashamed" if the memo became public. The *New York Times* also reported that Mr. Bradbury authored and Alberto Gonzales approved an OLC opinion concluding that abusive interrogation techniques such as waterboarding do not constitute cruel, inhuman or degrading treatment. This opinion was apparently designed to circumvent the McCain Torture Amendment, then being considered by Congress, which clarified that such treatment is absolutely prohibited.

   Would you agree that when OLC issues an opinion that has the effect of circumventing legislation then being considered, or recently passed by, Congress, that Congress should be notified?

10. In your recent *Wall Street Journal* op-ed, "Jose Padilla Makes Bad Law," you suggest that Guantanamo detainees "may be put in custody of other countries like Egypt or Pakistan that are famously not squeamish in their approach to interrogation – a practice, known as rendition, followed during the Clinton administration."

    a. What is your basis for stating that rendition is a practice "followed during the Clinton administration"?

b. Why did you not mention the Bush Administration's use of this practice?

11. According to Michael Scheuer, the former head of the CIA's Bin Laden Unit, there is a crucial difference in the way rendition was used during the Clinton and Bush Administrations. Under President Clinton, detainees were required to be taken to countries where there was outstanding legal process against them, not for the purpose of interrogation, while under President Bush, renditions are done solely for the purpose of interrogation and detainees are rendered to countries that frequently use torture. Some call Clinton's approach "rendition to law" and Bush's "rendition to torture."

    a. Do you believe rendition for the purposes of interrogation is legal?

    b. Would it be legal if the intelligence service of a foreign country detained an American in the United States and transferred him to another country for interrogation?

12. I am concerned about recent reports that Guantanamo detainees with a credible fear of torture have been sent to countries that routinely engage in torture, including Libya, Saudi Arabia, and Tunisia. I support reducing the Guantanamo detainee population, but this must be done in compliance with our legal obligations. The Administration relies on so-called "diplomatic assurances" as the legal basis for concluding that a detainee will not be tortured. It is difficult to understand how the Administration can rely on promises from countries that routinely violate their legal obligations not to use torture as the basis for concluding a detainee will not be tortured.

    a. Do you think relying on non-legally binding diplomatic assurances from a country that routinely engages in torture satisfies our legal obligations not to transfer an individual to a country where she or he is at risk of torture?

    b. Would it be legal for another country to send an American detainee to a country that routinely engages in torture on the basis of diplomatic assurances?

13. The recent killing of 17 Iraqis in a shooting involving U.S. security firm Blackwater has highlighted the need for greater oversight of contractors in Iraq. In the last several years, the Defense Department and the CIA Inspector General have referred a number of detainee abuse cases involving contractors and civilians to the Justice Department. These agencies will only refer an allegation to the Justice Department if they believe it rises to the level of criminal behavior.

    In 2004 then Attorney General Ashcroft transferred all pending Justice Department detainee abuse cases to the U.S. Attorney's Office for the Eastern District of Virginia. It has been three years since this transfer and in that time there has not been a single indictment in any of these cases. During the same time period, the Defense

Department has prosecuted numerous military personnel for detainee abuses. Of course, every case must be considered on its individual merits, but it is difficult to believe that every case referred by the CIA IG and the Defense Department was baseless. What troubles me most is the appearance that servicemembers are being held to a higher standard than others when it comes to fighting the war on terrorism.

a. Please provide an update on the detainee abuse cases referred to the U.S. Attorney's Office for the Eastern District of Virginia. How many of these investigations are still ongoing? How many have been closed?

b. Does it concern you that so many military personnel have been prosecuted while none of the contractors implicated in these cases have been?

c. If you are confirmed, what will you do to improve the Justice Department's oversight of private security contractors in Iraq and Afghanistan?

14. According to the *Washington Post*, before you were confirmed you "spent part of the weekend meeting with leading figures in the conservative world, seeking to allay their concerns about [your] philosophy and suitability for running [the] Justice Department."

    a. With whom did you meet?

    b. Who asked you to take these meetings?

    c. In addition to "leading figures in the conservative world," have you met with any leaders of civil rights or human rights organizations?

15. If confirmed, you would serve as Attorney General in the run-up to a hotly contested presidential election. There is a perception in some quarters that this Administration has, to some extent, played politics with important national security issues. We saw this in 2004, when President Bush argued that our national security would be threatened if the PATRIOT Act was not reauthorized immediately, even though the law did not sunset until the end of 2005. Many are concerned that this Administration will try to use the Protect America Act [the recently-passed FISA law] or some other national security legislation for the same purpose in the 2008 election.

    If confirmed, how would you ensure that important national security issues do not become inappropriately politicized during your tenure?

16. I read the *Wall Street Journal* op-ed in which you wrote that the PATRIOT Act "has become the focus of a good deal of hysteria, some of it reflexive, much of it recreational." The Justice Department's Inspector General has concluded that the FBI was guilty of "serious misuses" of National Security Letters and failed to report these violations to Congress and a White House oversight board. The Inspector General also reported that the number of NSL requests has increased exponentially from about

8,500 the year before enactment of the Patriot Act to an average of more than 47,000 per year and that even these numbers were "significantly understated" due to flaws in the FBI's database.

I believe the abuses documented in the Inspector General's report demonstrate the need for reasonable reforms to the PATRIOT Act that I and a bipartisan group of Senators proposed years ago in a bill called the SAFE Act. For example, the PATRIOT Act allows the FBI to issue NSLs for the sensitive personal information of innocent Americans without any connection to a suspected terrorist. As the Inspector General report noted, the standard for issuing an NSL "can be easily satisfied." The SAFE Act would restore a standard of individualized suspicion for using an NSL, requiring that the FBI to certify that the records sought have some connection to a suspected terrorist.

If you are confirmed, are you willing to work with Congress to ensure that the PATRIOT Act includes adequate protections for innocent Americans?

17. You have publicly defended the Justice Department's detention of Arab men after 9/11. But the Justice Department's Inspector General found that none of the 762 individuals held as "September 11 detainees" were charged with terrorism-related offenses, and that the decision to detain them was "extremely attenuated" from the 9/11 investigation. The Inspector General concluded that the Justice Department's designation of detainees of interest to the 9/11 investigation was "indiscriminate and haphazard." The Inspector General also found detainees were subjected to harsh conditions of confinement and "a pattern of physical and verbal abuse."

    a. What is your reaction to the Inspector General's findings?

    b. If you are confirmed, will you pledge to implement fully the Inspector General's recommendations for fixing these serious problems?

18. The following questions concern your *Wall Street Journal* op-ed, "Jose Padilla Makes Bad Law."

    a. You suggest that the government was forced to use the material witness law to detain suspects because we don't have a statute authorizing administrative detention on the basis of reasonable suspicion, as countries like the United Kingdom and Israel do. Do you think that the law should allow administrative detention of American citizens without criminal charges?

    b. In your op-ed, you state that, while in military custody, Padilla reportedly confessed to plotting to detonate a dirty bomb, and you lament that the government was unable to use this confession because Padilla did not have access to legal counsel. Do you think the government should be able to use the confessions of terrorism suspects against them, even if they

violate the Constitution?

c. **In your op-ed, you cite *Ex parte Quirin* as justification for the detention of Padilla as an enemy combatant. In *Quirin*, the Supreme Court upheld the trial by military commissions of Nazi saboteurs during World War II. The *Quirin* defendants were quickly charged, tried and convicted by military commissions. *Quirin* did not uphold the indefinite detention of American citizens as enemy combatants without charge or trial. Does *Quirin* really support the indefinite detention of American citizens as an enemy combatant?**

19. The resignation of Attorney General Gonzales appears to be linked to the U.S. Attorney firing scandal. Earlier this year, we learned that at least nine U.S. Attorneys were fired in 2006: David Iglesias (NM), John McKay (WA), Bud Cummins (AR), Carol Lam (CA), Kevin Ryan (CA), David Bogden (NV), Paul Charlton (AZ), Margaret Chiara (MI), and Todd Graves (MO).

Based on what you know about the job performances of these nine individuals, would you have permitted any of them to be terminated if you had been the Attorney General at the time?

20. The congressional investigation of the U.S. Attorney firing scandal disclosed that certain U.S. Attorneys may have been permitted to keep their jobs because they brought prosecutions against Democratic officials. Norman Ornstein, a scholar at the American Enterprise Institute, had an off-the-record conversation with a partisan Republican former U.S. Attorney and wrote in April 2007: "What was most interesting, however, was his insistence that the big problem was not the eight federal prosecutors fired, but the ones left in place. He told me to watch the cases of those who kept their posts while pursuing unwarranted and politically motivated prosecutions."

Just this week, former Attorney General Richard Thornburgh, a Republican, testified about this issue before the House Judiciary Committee. He testified that the U.S. Attorney in the Western District of Pennsylvania, Mary Beth Buchanan, engaged in a troubling practice of prosecuting Democrats – but not a single Republican -- in the run-up to last year's election, stating: "Ms. Buchanan thus succeeded in the Department's apparent mission of casting Democrats in a negative light during the election year."

Speaking more generally about the Justice Department's conduct during the past seven years, Attorney General Thornburgh testified: "We came to learn that those United States Attorneys who, inter alia, aggressively pursued Democrats, as opposed to those that did not, remained in place or were promoted. In fact, we learned from the study conducted by Donald Shields and John Cragan, from the University of Minnesota, that this Administration is *seven times* more likely to prosecute Democrats than Republicans."

In addition, there have been recent press reports indicating Karl Rove urged a U.S. Attorney in 2005 to prosecute former Alabama Democratic governor Don Siegelman.

And several months ago, we learned that the U.S. Attorney in Milwaukee, Steven Biskupic, brought a prosecution against a state employee that many people believe was motivated by a desire to bring bad publicity to the Democratic governor in Wisconsin who was in a tough re-election fight last year. The U.S. Court of Appeals for the Seventh Circuit took the extraordinary step of overturning the conviction in this case and ordering the defendant to be released immediately from prison.

a. What specific steps will you take to communicate to the 93 U.S. Attorneys that selective prosecution against Democratic officials is unethical and intolerable?

b. What actions would you take if you learned that an individual currently serving as a U.S. Attorney brought or plans to bring a prosecution against a Democratic official for either partisan gain or professional advancement?

c. If confirmed, will you request that former White House officials Karl Rove and Harriet Miers come before Congress to testify about the roles they played in firing or maintaining U.S. Attorneys?

21. If you are confirmed to be Attorney General, you will oversee the U.S. Marshals Service, an office within the Justice Department whose primary mission is to protect federal judges and their families. This issue hits home for me, in light of the tragic murders in 2005 of Chicago Federal Judge Joan Lefkow's husband and mother by a disgruntled litigant. I have worked with the Marshals Service over the past two years to improve judicial security for federal judges across the country.

Press reports indicate you were given a Marshals Service protective detail from 1993 to 2005. An October 16 article in the *Washington Post* reported that the Marshals Service filed a grievance against you and another judge for allegedly abusing their services.

Among other allegations, they claim that you, the other judge, or your spouses engaged in the following activities: (1) asking the Marshals Service employees to carry groceries, luggage, and golf clubs, (2) insisting the Marshals Service employees empty your trash, (3) prohibiting the Marshals Service employees on the night shift from flushing the toilet while working, and (4) demanding that Marshals Service employees drive you to your vacation home in dangerous weather conditions.

a. With respect to you or your wife, are any of these allegations true? If so, please provide an explanation.

b. Do you believe it is appropriate for a federal judge or their spouse to make these types of demands on Marshals Service personnel?

c. What was the resolution of the grievance filed against you by the Marshals Service?

d. If you are confirmed, will you pledge not to retaliate against the Marshals Service in any way?

22. Many recent press reports have described a troubling politicization of the hiring process at the Justice Department, particularly in the Civil Rights Division. The hiring process has been largely taken away from career attorneys and given to political appointees, who have packed the Division with Federalist Society members and Republican Party loyalists.

a. Will you agree to restore the power of Civil Rights Division career section managers to select attorneys they would like to interview and hire through the experienced attorney hiring process?

b. Will you agree to restore the power of career attorneys to select individuals they would like to interview and hire through the Honors Program and Summer Law Intern Program?

c. What other specific steps will you take to ensure that attorney hiring in the Civil Rights Division – and throughout the Department – is based on professional competence rather than ideological purity?

23. In addition to the politicization of the Civil Rights Division's hiring process, serious concerns have been raised about that Division's lack of enforcement on behalf of African Americans. The Civil Rights Division brought the first Voting Rights Act Section 2 lawsuit in history on behalf of whites, but failed to bring a single Voting Rights Act Section 2 case on behalf of African Americans during a five-year period between 2001 and 2006. And it took the Civil Rights Division six years to file their first employment discrimination disparate impact case on behalf of African Americans.

The president of the NAACP Legal Defense Fund, Theodore Shaw, submitted written testimony in conjunction with your hearing and accused the Civil Rights Division of "a retreat from its longstanding commitment to eliminate racial discrimination against African Americans."

Are you concerned about this retreat? If so, what specific steps would you take to reverse it?

24. My Illinois colleague, Senator Barack Obama, has said: "In our democracy, the goal should be to encourage eligible voters to vote, not to create new barriers to make it more difficult for them to exercise their most basic right."

Do you agree with that statement? Please explain your answer.

25. The Civil Rights Division's Voting Section has been hit particularly hard over the past seven years. Conservative firebrands like Hans von Spakovsky and Bradley Schlozman were brought into the Division, and they severely politicized voting rights

work. They rejected the recommendations of career attorneys in politically sensitive matters and they advanced positions that set back the voting rights of minorities.

One example is their approval of the Georgia photo ID law, which Senator Cardin asked you about at your hearing. This law had a disparate impact against minority voters and was struck down by federal courts as an unconstitutional "poll tax." Those are the court's words.

You testified at your hearing that it was "over the top" to characterize the Georgia photo ID law as a poll tax. Your statement is troubling because it reflects a lack of understanding of the case law and of the impact photo ID laws can have in restricting voting rights for minorities, the poor, and the elderly. Such laws are passed in the name of preventing fraud, yet there is virtually no evidence of polling place fraud in America.

There is a major case before the U.S. Supreme Court this term on the constitutionality of an Indiana photo ID law. The Justice Department has not yet publicly indicated whether it will file an *amicus* brief in the case and, if so, which side it will support.

If confirmed, will you agree to meet personally with the leaders of the NAACP Legal Defense Fund, the Leadership Conference on Civil Rights, and other top representatives of the civil rights community before the Justice Department decides whether to file an *amicus* brief in the Indiana case, so you can hear their side of the story as to why photo ID laws are harmful to minority voters?

26. The chief of the Voting Section, John Tanner, has made a series of statements and decisions that have led many elected officials and civil rights advocates to call for his resignation. Earlier this month, Mr. Tanner spoke on a panel and argued photo ID laws disenfranchise elderly voters but not minority voters because "our society is such that minorities don't become elderly the way white people do; they die first" and also that "anything that disproportionately impacts the elderly has the opposite impact on minorities." Mr. Tanner's suggestion that photo ID laws don't harm minority voters because they "die first" is inaccurate and insensitive.

Mr. Tanner, who was handpicked to be the chief of the Voting Section in early 2005 after the previous chief, Joseph Rich, was pressured to leave, has demoralized the section whose primary mission is to safeguard the voting rights of the American people. There has been an unprecedented exodus of Voting Section staff, including nine out of thirteen African-American professional employees, three out of four deputy chiefs, and nearly two-thirds of its career attorneys. Teresa Lynn, an African-American civil rights analyst and 30-year veteran of the Justice Department described the Voting Section as a "plantation" and two African-American employees have filed EEO complaints against Mr. Tanner.

In recent days, it has been reported that Mr. Tanner allowed a member of his staff, Susana Lorenzo-Giguere, to abuse the Justice Department's travel policy and to receive per diem compensation for personal travel. According to an October 24 *Washington Post*

article, this employee was permitted to collect $64 per day while spending nearly three months at her beach house in Cape Cod. The Justice Department's Office of Professional Responsibility is investigating Mr. Tanner and Ms. Lorenzo-Giguere regarding this matter.

Do you believe Mr. Tanner deserves to keep his position as chief of the Voting Section and top voting rights official at the Justice Department?

27. The chief of the Employment Litigation Section, David Palmer, has also been discredited in recent months. Eight former career staff members sent a letter to the Senate in July 2007 stating that Mr. Palmer, who was installed as the chief of the Employment Litigation Section in April 2002 after the previous chief was involuntarily removed, has created a "work environment permeated with partisanship and animosity" in which "he treated many of his subordinates with disdain and contempt." Their letter indicated Mr. Palmer was appointed section chief despite the fact that he was "reprimanded for poor work performance," "did not understand the basic principles of Title VII and constitutional law," and was the subject of one or more discrimination complaints.

The letter also stated: "Over the past several years, Mr. Palmer took a law enforcement organization that was the vanguard of civil rights enforcement for forty years and noticeably changed its direction. The Section has seen a decline in the filing of new cases at the same time that the Section has involved itself in controversial matters that would undermine core civil rights protections. The Section has failed in its core mission to secure the rights of African-Americans, Hispanics, women, and other protected groups, as the number of cases has declined precipitously."

Do you believe Mr. Palmer deserves to keep his position as the chief of the Civil Rights Division's Employment Litigation Section?

28. At your nomination hearing, NAACP Legal Defense Fund president Theodore Shaw gave the following advice about de-politicizing the hiring process at DOJ: "I also think that it would be a good thing for the attorney general and the assistant attorney general, whoever that might be, of the Civil Rights Division to have some dialogue with some of the people who ran the Civil Rights Division under prior administrations, under both parties, as well as some of the career attorneys who have left the department, to get a sense of perhaps how the department could operate to restore its credibility and integrity."

Would you be willing to engage in such a dialogue with former officials and career attorneys who served in previous administrations under both parties?

29. In response to a question at your nomination hearing about your commitment to civil rights, you indicated that when you served as a federal judge, half of the law clerks you hired were women.

a. How many law clerks did you hire who were African-American?

b. How many total law clerks did you hire during your 18 years of service as a federal judge?

30. According to the FBI's Uniform Crime Reports, violent crime in the United States increased by 2.3 percent in 2005, and increased again by 1.9 percent in 2006. At the same time that violent crime rates have gone up, the Administration has sought to cut funding for Department of Justice programs that provide state and local law enforcement assistance.

As Attorney General, would you continue the Administration's annual efforts to cut funding for the following Department of Justice programs:

The Community Oriented Policing Services Program?
The Edward Byrne Memorial Justice Assistance Grant Program?
The State Criminal Alien Assistance Program?
The Drug Court Discretionary Grant Program?
Juvenile Justice and Delinquency Prevention Act programs?

31. When I became aware earlier this year of the serious health risks associated with the use of restraints on pregnant inmates, I began working with the Federal Bureau of Prisons and the U.S. Marshals Service to clarify their policies regarding the use of such restraints.

a. Do you believe that pregnant inmates should be shackled or restrained in ways that put the pregnancy or the health of mother or child at risk?

b. If you are confirmed as Attorney General, would you work with me to ensure that agencies within the Department of Justice have policies in place to protect pregnant inmates and their children from the adverse health impacts of certain uses of restraints?

32. In August 2004, the Office of Legal Counsel issued a memorandum concluding that the Second Amendment secures an individual right to keep and to bear arms.

a. Do you agree with this endorsement of the view that the Second Amendment protects a right to possess firearms for private purposes unrelated to the militia, even though that view been rejected by most Federal appeals courts and conflicts with the holding of the U.S. Supreme Court in *United States v. Miller*?

b. Do you support efforts to overturn federal, state and local gun control laws on the grounds that these laws violate the "individual right" interpretation of the Second Amendment?

c. It is an unfortunate fact that there are federal firearms licensees (FFLs) who knowingly sell or supply guns to gang members and other criminals. It is imperative that we break these supply chains and keep guns out of the hands of

those who are prohibited from using them. If you are confirmed as Attorney General, will you make it a Department priority to identify and prosecute those FFLs who supply guns to gangs and criminals?

33. In recent years, numerous federal agencies have sought to preempt established bodies of state law through the rulemaking process, despite the absence of underlying statutory authority for such preemption. On several occasions, federal agencies have inserted statements regarding the preemptive effect of agency rulemakings within preambles to final rules published in the Federal Register, without providing notice and an opportunity to comment on such preemption statements.

a. Do you believe it is appropriate for a federal agency to state in the Federal Register that an agency rule or regulation preempts state law, where Congress has not expressly authorized such preemption and where compliance with duties imposed by state law does not make compliance with the federal rule or regulation impossible?

b. Do you believe it is appropriate for a federal agency to state in the Federal Register that an agency rule or regulation preempts state law, without providing notice and an opportunity to comment on such statement?

34. On October 24, 2006, Dr. David Cornbleet of Chicago was brutally murdered in his office by a former patient, Hans Peterson. Peterson is a U.S. citizen who was born in the United States and who had lived in the United States up until the time of the murder. After the murder, Peterson fled to the French West Indies, turned himself in to the French authorities, and confessed to killing Dr. Cornbleet. Peterson's mother was a French citizen, and therefore Peterson is also considered a French citizen under French law. Because French law prohibits the extradition of French citizens to the United States, France is refusing to extradite Peterson to face trial for his crimes in Illinois. Media reports indicate the Peterson purposefully fled to French territory and turned himself in to French authorities because he knew that if he was convicted for murder under French law, he would face more lenient punishment than under American law.

a. If you are confirmed as Attorney General, will you work to see that justice is done in the matter of Dr. Cornbleet's murder?

b. If you are confirmed as Attorney General, will you work with other federal agencies to ensure that U.S. citizens who have dual citizenship with another country are not able to commit murder within the United States and then surrender to the authorities of the other country in order to avoid justice in the United States?

35. The National Institute on Drug Abuse reports that about half of state and federal prisoners meet standard diagnostic criteria for alcohol or drug dependence. Yet only 13% of those needing drug abuse treatment receive it while incarcerated. This means that many of the 650,000 inmates who are released back into the community each year have

not received treatment for their addiction. This makes them likelier to relapse, and to recidivate.

a. What steps do you believe the Department of Justice should take to address the issue of addiction among the federal inmate population?

b. What assistance would you recommend that the Department provide to states with regard to addiction treatment programs for prisoners?

36. In September 2006, the Bureau of Justice Statistics released a report stating that 45% of federal prisoners suffered from mental health problems. Many of these prisoners will also be released into society at some point.

a. What steps do you believe the Department of Justice should take to address the mental health problems of inmates in order to reduce recidivism?

b. What assistance would you recommend that the Department provide to states with regard to mental health treatment programs for prisoners?

37. Asylum law in the United States lacks the flexibility or openness of other nations and is designed to address the common difficulties of politically active men, but often neglects the horrors that women face. For example, in the Rodi Alvarado case, a Guatemalan woman who had been routinely abused by her husband and ignored by local police, fled to the United States. She would have been killed had she returned to her native land. She was granted asylum initially, but that was overturned by an administrative immigration court, at which point then Attorney General Janet Reno proposed new rules that would address this hole in the law and create more gender equity.

Those rules were stayed by Attorney General John Ashcroft, and the Alvarado case, along with other similar cases, have either remained in limbo, or have been decided on narrow legal grounds. The Department of Homeland Security has expressed dismay over how narrowly the law is being read and wants more protections for female asylees. In effect, they would like the Reno regulations to be adopted, or other similar rules that end this limbo and strike at the problem of inflexible and inequitable asylum law. This has put DHS at odds with the Department of Justice, which has so far refused to promulgate new regulations that will overturn the rigid immigration appellate ruling.

If you are confirmed as Attorney General, will you make a commitment to support regulations that will equalize the law and make American asylum law more open to the particular plight of women and girls?

38. In August 2007, the Transportation and Security Administration released a new policy for the secondary screening of religious head coverings. They did so without consulting the relevant community groups and without pre-training TSA screeners on the cultural implications of the new policy, which created an arbitrary system for checking head coverings, particularly turbans, when passengers successfully passed through

primary screening (the metal detector). Many Sikh individuals felt violated, and complained to their community organizations, as well as to TSA. As a result of public pressure, TSA recently revised and improved its policy.

As Attorney General, you would not have direct authority over TSA, but your guidance and opinions on matters relating to profiling would have widespread impact.

a. Your writings and judicial opinions indicate that on matters of national security you tend to strongly defer to government policies. What assurance can you provide that you would honor individual rights and liberties when offering guidance on profiling and airport screening?

b. Would you discourage agencies, inside and outside of the Justice Department, from promulgating regulations and policies that contain elements of profiling?