

Graham QFRs for Judge Mukasey

1. Does the waterboarding of detainees held by military or non-military agents of the United States violate the McCain Amendment or Common Article 3 of the Geneva Conventions?
2. Can the President of the United States, under any circumstances, lawfully violate or order someone to violate the McCain Amendment or Common Article 3 of the Geneva Conventions?
3. Do you believe that Common Article 3 of the Geneva Conventions includes a balancing test to weigh the circumstances surrounding an alleged violation and/or a requirement of specific intent to find a violation?
4. What is your definition of torture?
5. What is your definition of cruel, inhuman and degrading treatment?
6. If you believe that the McCain Amendment, which defines cruel, inhuman and degrading treatment with reference to the 5th, 8th, and 14th amendments, includes a balancing test, do you believe that balancing test is specific to the incident in question? Or can it be applied to the War on Terror as a whole?
7. In September, 2007, you made a public statement to the Associated Press in which you described the courts in the Fourth Circuit. You said: "It's easy to have a rocket docket when you have horse-and-buggy cases."

In fact, the Fourth Circuit has handled a number of difficult and high-profile cases involving terrorists like Moussaoui, Hamdi, Padilla, and al-Marri. Over the last five years, the Fourth Circuit has rendered decisions in over 125 death penalty cases and routinely handles difficult cases involving a host of constitutional issues.

In light of this information, would you like to retract or reconsider your comment on the Fourth Circuit? Please comment on your views of the Fourth Circuit courts.

8. Do you agree with the Department of Justice's current position (stated in a 2004 memorandum from the Office of Legal Counsel to Attorney General Ashcroft) that the Second Amendment protects an individual right to keep and bear arms, not merely a right of States or a right restricted to persons serving in militias?

If so, do you believe that the Second Amendment applies to the states through the 14th Amendment incorporation doctrine?

9. Do you agree with the ruling by the U.S. Court of Appeals for the D.C. Circuit in *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007) that the District of Columbia's bans on registration of new handguns, carrying firearms in the home, and possession of a functional firearm in the home violate the Second Amendment?

10. Do you support the long-standing position of the Bureau of Alcohol, Tobacco, Firearms and Explosives (also strongly supported by the Fraternal Order of Police), enacted for the past several years as a rider to ATF appropriations bills (the “Tiahrt Amendment”), that prohibits release of firearms trace information other than for use in a bona fide criminal investigation or prosecution?

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