

Questions Submitted by Senator Whitehouse for Michael Mukasey:

1. The State of Rhode Island has a serious problem with human trafficking, which is an important criminal justice and human rights issue. If confirmed, what will you do as Attorney General to ensure that the Department's resources are effectively deployed to combat human trafficking? Does the Department have adequate resources to effectively confront this problem? Is any new legislation necessary to help the Department combat human trafficking?
2. Do you believe that the President may act contrary to a valid executive order? In the event that he does, need he amend the executive order or provide any notice that he is acting contrary to the executive order?
3. The U.S. has long taken the position that techniques such as waterboarding, forced standing for prolonged periods, and sleep deprivation constitute war crimes. As early as 1901, a U.S. Army Major, Edwin Glenn, was convicted for waterboarding a captured insurgent in the Philippines. U.S. military commissions after World War II prosecuted Japanese troops for engaging in waterboarding and stress positions. A Japanese soldier named Tetsuo Ando was sentenced to five years hard labor for, among other offenses, forcing American prisoners to "stand at attention for seven hours." Similarly, Yukio Asano was convicted for, among other charges, "forcing water into [the American prisoners'] mouths and noses." Do you believe the United States Government was right to prosecute these men?
4. In your testimony to the Senate Judiciary Committee on October 18, 2007, you indicated that you did not know what is involved in the technique of waterboarding and that if the practice of putting someone in a reclining position, strapping him or her down, putting cloth his or her face and pouring water over the cloth to simulate the feeling of drowning "amounts to torture, it is not constitutional." Now that you have had a chance to review the relevant public documents describing waterboarding, can you explain any circumstances under which waterboarding would not constitute torture?
5. The Judge Advocates General (JAGs) of the U.S. Army, Navy, Air Force and Marines stated in August 2006 that the use of stress positions, dogs, and forced nudity for interrogation purposes are all unlawful. Do you agree with the JAGs that the use of stress positions, dogs and forced nudity are unlawful? Please address each technique individually, and, if you believe any of these techniques are lawful, please explain the legal basis for each conclusion.
6. On what legal basis would the United States object if the Government of Iran or North Korea detained an American citizen, accused him of engaging in hostile acts, and detained him in secret, denying consular visits and ICRC access, and even refusing to acknowledge his detention?
7. In his book, Jack Goldsmith concluded that, at the direction of the White House, the Office of Legal Counsel had refused to show certain draft opinions to the Department of

State in order to “control outcomes in the opinions and to minimize resistance to them.”

If you are confirmed as Attorney General, would you allow your attorneys to accept direction from the White House to exclude or ignore the Department of State lawyers when analyzing international law? Can you imagine a circumstance in which it would be appropriate to exclude these attorneys?

8. What specific steps will you take, beyond having conversations with current and former Department officials and with members of Congress, to audit which internal processes, rules, traditions, norms, and practices need to be changed or restored in order to support the Department’s return to independent, professional, and non-political standards?

Will you convene a bipartisan “blue-ribbon” commission composed of former high-ranking Department officials to make recommendations in this regard?