



U.S. Department of Justice

Office of Legislative Affairs

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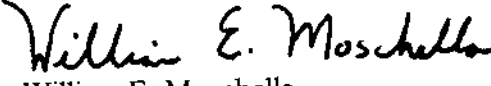
September 14, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses to questions arising out of the appearance of Timothy E. Flanigan before the Committee on July 26, 2005, concerning his nomination to be Deputy Attorney General of the United States, and which were received by the Department on September 6, 2005. We hope that you will find this information helpful in the consideration of this nomination. Please do not hesitate to contact the Department if we can be of further assistance in connection with this or any other matter.

Sincerely,


William E. Moschella
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

**Responses to Questions for Timothy Flanigan,
Nominee to be Deputy Attorney General
From Senator Edward M. Kennedy**

I. Interrogation and Detention of Detainees

1. Independent Commission

It has been reported that you played a central role in crafting the Administration's policies relating to the detention and interrogation of detainees, including the formulation of the plan for military commissions and expanding the scope of permissible interrogation techniques beyond reasonable limitation. You seem to have been at the center of the policy making that excluded the Judge Advocate Generals and the State Department from meaningful participation in the creation of this new legal regime, one where the Geneva Conventions don't apply, where torture was defined so narrowly as to permit almost any conduct, and where our allies questioned the fairness of the military commission system that you helped to devise.

Secretary of State Colin Powell warned the White House, that the approach would "... reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops." Unfortunately, his predictions came true. Yet, despite the fact that we have had twelve separate military investigations into allegations of detainee abuse, not a single report has examined comprehensively the role that civilian authorities, including you, have played in crafting the policies that led to our missteps

A Do you agree that the Department of Justice could not have any role in examining the issues surrounding the Administration's interrogation and detention decisions if the Attorney General and the Deputy Attorney General were involved in the formulation, adoption, and implementation of those decisions? If not, how could the Department of Justice participate in an inquiry, study, or investigation without creating the appearance of impropriety since the roles played by you and the Attorney General would necessarily be the subject of any such inquiry, study, or investigation?

ANSWER: The President has repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. I understand that the Administration and the Department of Justice are committed to investigating and punishing acts of torture or improper treatment of detainees. Whether a particular Executive Branch officer or employee is properly recused from participating in a matter is a question of law and policy that turns on all of the relevant facts and circumstances.

Even in circumstances in which senior officers of the Department of Justice are recused from particular matters, the Department has in place procedures for investigating such matters effectively and impartially.

B. Isn't the only answer to have an independent commission to avoid the appearance of any conflicts of interest?

ANSWER: The President has repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. I understand that the Administration and the Department of Justice are committed to investigating and punishing acts of torture or improper treatment of detainees. The United States has conducted a large number of investigations focusing on allegations of torture or abuse. Additionally, the Senate Armed Services Committee held extensive hearings on this issue. These investigations have resulted in multiple substantive reports. I understand that individuals found to have acted unlawfully were or are being held accountable.

C. The Administration strongly resisted the formation of the 9/11 Commission, yet it provided valuable insights into our intelligence failures. Why shouldn't we let an independent body review the policies and decisions that have effectively undermined a critical component of our military culture?

ANSWER: The United States has conducted a large number of investigations focusing on allegations of torture or abuse. These investigations have resulted in multiple substantive reports. I understand that individuals found to have acted unlawfully were or are being held accountable.

2. Bybee Torture Memorandum

The August 2002 Bybee Torture Memorandum was officially withdrawn last December and its analysis of the definition of torture under 18 U.S.C. 2340-2340A was repudiated. You testified on July 26, 2005 before the Judiciary Committee that you were briefed by the Office of Legal Counsel on the substance of the memo, that you likely asked questions about the statutory analysis to be sure that it was "correct" and that it "was something that made sense."

A. Do you now agree that that the statutory analysis was too extreme and incorrect?

ANSWER: As I stated at my confirmation hearing, I believe that certain arguments contained in the August 1, 2002, memorandum were unnecessary. That memorandum, however, has been withdrawn and subsequently replaced by a memorandum dated

December 30, 2004. I agree with the analysis of the statute contained in the December 30, 2004, memorandum.

B. If it is too extreme now, why was it acceptable when it was presented to you?

ANSWER: I was persuaded by the general description given in the briefings of OLC's analysis of the intent of Congress in framing the anti-torture statute. The purpose of the briefings, as I understood them, was to keep the Counsel to the President informed, not for me to substitute my judgment for that of the Department of Justice regarding the appropriate underlying legal analysis.

C. You had been the Assistant Attorney General of the Office of Legal Counsel; your opinion of the Memorandum's analysis would have carried great weight. Did you ever express opposition or reservations about any aspect of the Memorandum? If so, to whom, as to which portions, and what was the response? If not, why not?

ANSWER: As explained above, I was persuaded by the description given in the briefings of OLC's analysis of the intent of Congress in framing the anti-torture statute. However, as I have explained, the purpose of those briefings was to keep the Counsel to the President informed. I was not in a position to substitute my judgment for that of the Department of Justice regarding the appropriate underlying legal analysis, as I did not have the time or resources to conduct an independent analysis of the question.

D. What does it mean to you that a statutory analysis "makes sense?"

ANSWER: It means that the analysis regarding the intent of Congress in framing the anti-torture statute appears to be reasonable.

a. Did it make sense that that torture was being defined as physical pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death?"

ANSWER: As Deputy Counsel to the President, I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. I do not recall any discussion of the analysis to which you refer.

b. Did it make sense that the Memorandum confused the most basic distinctions in criminal law between intent and motive?

ANSWER: As I stated in my previous response, as Deputy Counsel to the President, I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. I do not recall any discussion of the analysis to which you refer.

c. Did it make sense that the President has the power to overrule Congressional prohibitions on committing torture, regardless of how it is defined?

ANSWER: As I have stated in my previous responses, as Deputy Counsel to the President, I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. The August 1, 2002, memorandum was withdrawn and was subsequently replaced by a memorandum dated December 30, 2004, which concludes that the Commander-in-Chief analysis in the August 1, 2002, memorandum "was—and remains—unnecessary." I agree with this conclusion, particularly in light of the President's unequivocal and repeatedly reaffirmed policy against torture.

d. In your July 26, 2005 testimony, you described the references to the Commander-in-Chief override as "unnecessary" and "useless." Yet, this analysis was contained in a official legal policy from OLC that was the basis of a substantial portion of the Defense Department policy on interrogation contained in its April 2003 Working Group Report. As embodied in the Bybee Memorandum and the March 2003 Yoo Memorandum to Defense Department General Counsel Haynes, this view of unchecked Executive Power became policy for the Defense Department over the objections of the Judge Advocates General. If, as you testified, the President is not above the law and the President can not place other people above the law, how could you have permitted the Bybee Memorandum to become the official view of the law for the country?

ANSWER: The President, like all officers of the Government, is not above the law. He has a duty to protect and defend the Constitution and faithfully to execute the laws of the United States, in accordance with the Constitution. I left the Government in December 2002. Therefore, I was not briefed on, or otherwise involved in reviewing or preparing government documents in the Spring of 2003. As a result, I have no knowledge of government memoranda issued in 2003. I am not aware of any actions taken or any policies adopted based on the "Commander-in-Chief override" analysis to which the question refers. I am aware that the President has recently and repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture.

3. March 2003 Yoo Memorandum to Haynes

As a former Assistant Attorney General for the Office of Legal Counsel, I'd like to your impressions of the document, "Principles to Guide the Office of Legal Counsel," issued in December 2004 and signed by 19 attorneys formerly with the office. I have attached a copy to these questions for your review.

I'm particularly interested in principle #6 which states that "OLC should publicly disclose its written legal opinions in a timely manner, absent strong reasons for delay or non-disclosure."

A. Do you agree that OLC opinions which form the basis of Administration policy ought to be disclosed in a timely manner?

ANSWER: I agree that many OLC opinions can and should be published, usually after a lapse of time, where the Department of Justice determines, in consultation with affected agencies, that publication is in the public interest. During my tenure as Assistant Attorney General for OLC, I directed that those consultations proceed and that as many opinions as possible be published. That practice, however, does not diminish the interest that the Government may have in preserving the confidentiality of other OLC opinions. As the document to which you refer entitled "Principles to Guide the Office of Legal Counsel" (Principles) recognizes, some of OLC's legal advice "properly should remain confidential, most notably, some advice regarding classified and some other national security matters." Maintaining the confidentiality of OLC legal advice is often essential to the Department, the President, and the Executive Branch.

Moreover, I have reviewed generally the Principles and agree with much of the document. I believe that the document reflects operating principles that have long guided OLC in both Republican and Democratic administrations.

As referred to above, a March 14, 2003 OLC opinion by John Yoo may concludes that the President can authorize violation of the Uniformed Code of Military Justice. It seems to say that the President can override Congress's authority to criminalize abusive treatment of detainees.

Several Senators from our Committee and the Armed Services Committee have asked for the Yoo Memo and we were told it would be available. But the Administration has refused to provide it – even in a classified form – and no adequate explanation has been given to justify withholding it.

B: Do you agree that there is no Commander-in-Chief override which would permit the President to authorize torturing a detainee or abusing a detainee in violation of the UCMJ? If not, please describe in detail the circumstances under which you believe the President has authority to ignore the prohibitions contained in military law ratified by Congress?

ANSWER: The President does not ignore the law. I left the Government in December 2002. Therefore, I was not briefed on, or otherwise involved in reviewing or preparing government documents in the Spring of 2003. As a result, I have no knowledge of government memoranda issued in 2003. The "Commander-in-Chief override" analysis to which the question refers appears similar to analysis contained in the August 1, 2002, memorandum, discussed above. The August 1, 2002, memorandum was withdrawn and was subsequently replaced by a memorandum dated December 30, 2004, which concludes that the Commander-in-Chief analysis in the August 1, 2002, memorandum "was-and remains-unnecessary." I agree with this conclusion, particularly in light of the President's unequivocal and repeatedly reaffirmed policy against torture.

C: Should the Senate have access to the Yoo Memorandum so that the country can decide whether the Administration has wrongly expanded its authority? If not, please describe in detail why the official legal opinion that provides the basis for this unprecedented expansion should be withheld?

ANSWER: I left the Government in December 2002. Therefore, I was not briefed on, or otherwise involved in reviewing or preparing government documents in the Spring of 2003. As a result, I have no knowledge of government memoranda issued in 2003. I am not in a position to say whether it would be appropriate to disclose the memorandum. I am not aware of any actions taken or any policies adopted based on the "Commander-in-Chief override" analysis. To the contrary, I am aware that the President has recently and repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture.

D: If you're confirmed as Deputy Attorney General, should you recuse yourself from any role in deciding whether to provide the Yoo Memo or similar OLC documents on detention and interrogation policies? Please explain.

ANSWER: Whether a particular Executive Branch officer or employee is properly recused from participating in a matter is a question of law and policy that turns on all of the relevant facts and circumstances. If confirmed, I would be committed to determining whether I would properly be recused under the applicable law and policy.

4. Waterboarding/Mock Execution

In March 2005, you were quoted in an article in The American Prospect acknowledging that waterboarding was discussed by the Administration as a way of handling the interrogation of high-level Al Qaeda suspects. During your July 26, 2005 testimony, you said that you did not know whether waterboarding is an acceptable technique to be used by an agent of the United States. You testified that the issues surrounding waterboarding were not “at stake” in the briefings you received about the Bybee Torture Memorandum.

In fact, waterboarding and similar techniques were exactly what was at stake. On October 11th 2002, three months after the date of the Bybee Memorandum, major General Dunlavey, Commander of the Joint Task Force at Guantanamo Bay, Cuba, requested approval for use of several interrogation techniques, including the use of scenarios designed to convince detainee that death or severely painful consequences were imminent for him and/or his family and specifically, the use of a wet towel and dripping water to induce the misperception of suffocation.

The legal analysis provided by staff judge advocate Diane Beaver indicated that such conduct would be a violation of the UCMJ, but that they would not violate applicable federal laws because she recommended obtaining permission or immunity in advance from the convening authority for military members utilizing these methods.

Beaver also wrote that these techniques were legal under 18 U.S.C. 2340 because: a) no severe physical pain would be inflicted; b) prolonged mental harm is not intended; and c) there is a legitimate governmental objective in obtaining the information for national security reasons. These are the erroneous justifications that were incorporated in the Bybee Memorandum, which you judged to see if they “made sense,” and which were flatly rejected by the December 30, 2004 OLC revision.

A. Do you agree that intentionally inducing a detainee's perception of suffocation is torture under 18 U.S.C 2340 and is illegal?

ANSWER: I agree with the statutory analysis set forth in the December 30, 2004, memorandum. Whether a particular interrogation technique violates section 2340 depends on all of the relevant facts and circumstances, and it would therefore be inappropriate for me to speculate as to the legality of any interrogation technique without knowing the facts and circumstances.

- B. Do you agree that during your time as Deputy White House Counsel, you were aware that waterboarding was a technique designed to induce the perception of suffocation?**

ANSWER: Although I was present at briefings in which specific interrogation methods were mentioned, I do not recall that they were discussed in detail. My role as Deputy Counsel to the President was not to evaluate particular methods. Rather it was to assist the Counsel to the President in ensuring that the Department of Justice was providing legal advice that would assist the Government in complying with the law.

- C. If the military adopted the discredited analysis contained in the Bybee Memorandum that assumed the President could override the UCMJ and defined Torture so narrowly that it permitted suffocating detainees until they thought they would die, why shouldn't all those in the Administration that approved, condoned, or facilitated the promulgation of the Bybee Memorandum be: a) required to disclose all knowledge about the Memorandum's creation and promulgation; and b) held accountable for advocating violations of federal law?**

ANSWER: As an initial matter, the President has recently and repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. I agree wholeheartedly with that policy. I understand that the Administration and the Department of Justice are committed to investigating and punishing acts of torture or improper treatment of detainees. I am unaware of any actions taken or policies adopted by the Government that are inconsistent with the analysis set forth in the December 30, 2004, OLC memorandum, which superseded the Bybee memorandum.

II. Judicial Activism/Independence of the Judiciary

In 1997, you testified before the Subcommittee on the Constitution, Federalism, and Property Rights on judicial activism and the independence of the courts. You said:

"In evaluating judicial nominees, the Senate has often been stymied by its inability to obtain evidence of a nominee's judicial philosophy. In the absence of such evidence, the Senate has often confirmed a nominee on the theory that it could find no fault with the nominee. I would reverse the presumption and place the burden squarely on the judicial nominee to prove that he or she has a well-thought out judicial philosophy, one that recognizes the limited role of federal judges."

1. **As you know, Democrats and Republicans alike have concerns about the activist agendas of judicial nominees. How would you require a nominee to bear the burden that you described? What sort of proof would you require?**

ANSWER: As I stated in my earlier testimony, a nominee for the federal judiciary should have an understanding of the proper role of judges in our constitutional system. Senators have the opportunity to question nominees about their judicial philosophy during a confirmation hearing. Each senator must decide for her or himself whether the nominee has articulated an appropriate judicial philosophy prior to voting on confirmation.

I understand that you've been an active member of the Federalist Society for many years, including as a paid research consultant. Federalist Society leader Boyden Grey has commented that in this Administration, "the real legal policy energy may well be in the White House when it comes to selection of judges and justices and policy-making . . ." That suggests an aggressive attempt to change national policy through the courts, rather than through Congress or the Executive Branch.

2. **Isn't this a sign of choosing judges who suit policy tests, rather than neutrally apply law to facts? Why isn't this practice exactly the kind of judicial activism that you say you disfavor?**

ANSWER: I am not familiar with Mr. Gray's statement or the context in which it was made and therefore am unable comment on it. The President has repeatedly stated that he is committed to nominating individuals who share his view of the proper role of a judge in our system, which is to interpret the law and not to legislate from the bench.

The Administration and Republican majority have recently orchestrated a drumbeat of attacks on the independence of the Judiciary. Judicial blacklists, jurisdiction stripping legislation, and proposals designed to limit judicial discretion are fast becoming the norm in Congress. Heated rhetoric threatening the independence of the judiciary along with demand that judges justify their decisions has become a staple of Republican philosophy.

You testified in July 1997 before the Judiciary Committee that:

. . . A judge could so abuse the judicial power through willful misconstruction of the law that the judicial oath would be violated. A frank discussion in the political sphere of the possibility of removal in such cases may have the salutary effect of prompting judges to put aside their own policy preferences and adhere to the law.

In your July 26, 2005 testimony acknowledged that, even in context, this testimony was “an overstatement, to be sure, and inappropriate to suggest that we should threaten Federal judges as a general matter with impeachment.”

- 3. Your retraction notwithstanding, your 1997 testimony seems to be consistent with a general Republican hostility to the courts today. Does your testimony on July 26, 2005 represent a break from a prior philosophy? If so, to what do you attribute the shift?**

ANSWER: As I stated in my July 26, 2005, testimony, my 1997 testimony was an overstatement. It has been my consistent belief that judges should apply the law as it is written and not inject any personal policy preference into their decision-making.

- 4. If you are saying now that your 1997, testimony was simply inartful, can you explain why your 1997 comments seem to be so consistent with the current trend, exemplified by Congressional comments surrounding the Terry Schiavo episode, that appear so hostile to the independence of the judiciary?**

ANSWER: I believe that the independence of the judiciary is extremely important, and my testimony was never meant to suggest otherwise. I continue to have concerns, as I expressed in my 1997 testimony, about judges who substitute their personal opinions for the rule of law.

III. Valerie Plame Investigation

Deputy Attorney General Comey appointed a special prosecutor in the Valerie Plame investigation because of the conflicts of interest posed by anyone in the Administration participating.

- 1. Please confirm that if you become Deputy Attorney General, you will disqualify yourself from any role in that investigation, to avoid any appearance or possibility of political interference with Mr. Fitzgerald’s efforts.**

ANSWER: If confirmed, I will comply with all applicable ethics laws, regulations, and rules. With regard to the Plame investigation, if confirmed, I would consult with and rely upon the advice of the Department of Justice’s ethics officials to determine whether I should be recused.

- a. If you refuse to confirm your recusal, explain why your close relationship and loyalty to the President and the Attorney General would not create the appearance of impropriety if you participate in the investigation?**

ANSWER: If confirmed, I would – like Mr. Fitzgerald – be “in the Administration,” appointed by the President to serve in the Justice Department and “take Care that the Laws be faithfully executed.” U.S. Const., art. II, § 3. As such, I would not be influenced by any person’s political association, activities, or beliefs, or by my own personal feelings concerning any person, but would seek to obtain all of the evidence and, if warranted, see that federal prosecutors charge the most serious, readily provable offense.

- b. Is there any reason why Mr. Fitzgerald should not be permitted finish the investigation under his existing authorization and conditions?**

ANSWER: Not to my knowledge.

- c. Why would you try to exercise control just as the investigation is nearing a conclusion?**

ANSWER: As a private citizen, I am not familiar with the facts or scope of the investigation. I do not now foresee a need to exercise control over the investigation.

- 2. If you do not intend to recuse yourself, please state your commitment not to intrude into or interfere in any way with the investigation, not to share any information with the White House or the Attorney General, and not to revoke or alter the existing authorization and conditions under which Mr. Fitzgerald is operating. If you refuse to do so, explain why.**

ANSWER: As a private citizen, I am not familiar with the facts or scope of the investigation. I do not now foresee a need to exercise control over the investigation. If confirmed, I will consult with Department of Justice ethics officials as to whether I should recuse myself from participation in the Plame investigation. If it is determined that I should not recuse myself, then I would participate in the oversight of the investigation in strict compliance with all applicable ethics laws, regulations, and rules.

3. **Have you been interviewed by the special prosecutor? If so, when and on what topics?**

ANSWER: No.

4. **Have you been invited or subpoenaed to appear before the grand jury?**

ANSWER: No.

5. **Please confirm that you have not been briefed by anyone at any time on any investigative or grand jury information related to the investigation, and that you did not participate in any way in the collection and/or review of evidence by the White House Counsel**

ANSWER: I have not been briefed by anyone at any time on any investigative or grand jury information related to the Plame investigation. Furthermore, I did not participate in any way in the collection and/or review of evidence by the White House Counsel.

6. **Is it appropriate for White House officials or their attorneys or political representatives to be making detailed public arguments about the evidence in the case, at a time when, according to the White House spokesman, Mr. Fitzgerald has asked the White House not to comment on the case?**

ANSWER: I am not familiar with any statements about the case made by White House officials, attorneys, or political representatives, nor am I familiar with any request not to comment made by Mr. Fitzgerald. As a result, I am unable to comment on the propriety of any statements that may have been made.

IV. Hate Crimes

As I'm sure you agree, Hate Crimes are a violation of all our country stands for. They send the poisonous message that some Americans deserve to be victimized solely because of their race, religion, sexual orientation, or because of other kinds of bigotry. Hate crimes are crimes against entire communities. As the Supreme Court has said, bias-motivated violence is "more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest."

1. In your view, do Hate Crimes involve substantial federal interests?

ANSWER: I am opposed to all violent crimes, no matter where they are committed. Section 245 of Title 18, which I fully support and would vigorously enforce, allows federal prosecutors to pursue bias motivated crimes that implicate federally protected activities.

Last year, the vast majority of Congress supported legislation to strengthen the protections under the current federal hate crime statute, 18 U.S.C. Section 245. Under the leadership of Senator Warner and Senator Gordon Smith, the Senate approved legislation by a nearly 2-to-1 bipartisan majority of 65 to 33. Eighteen Republicans joined all the Democrats in approving this measure. In the House, by a vote of 213 to 186, members instructed the GOP leadership to support the legislation. Unfortunately, the House Republican leadership blocked the protections from the first bill.

2. Did you have any role in communicating to the House leadership the Administration's opposition to the legislation?

ANSWER: I left my position as Deputy Counsel to the President in December of 2002. I did not play any role in this piece of legislation before Congress in 2004.

The hate crimes provision is an essential response to a serious problem which continues to plague the nation. Since the September 11th attacks, we've had a shameful increase in the number of hate crimes committed in our country against Arabs and Muslims – murders, beatings, arson, attacks on mosques, shootings, and other assaults. Our legislation makes it easier for the Justice Department to assist state and local authorities in dealing with this type of crime. Investigation and prosecution of these crimes is often, labor intensive, and time-consuming. It relies significantly on the use of investigative grand juries. State and local authorities are often desperate for federal prosecutors to shoulder some of the burden of these prosecutions.

Unfortunately current law fails to protect people from hate crimes because of disability or their sexual orientation. It contains excessive restrictions requiring proof that the victims were attacked because they were engaged in certain "federally protected" activities."

3. Do you favor strengthening the current law to deal with these crimes?

ANSWER: Bias motivated crimes are a scourge on our society that must be prevented and punished to the full extent of the law. It is my understanding that the Department prosecutes a wide variety of bias motivated crimes under existing federal law. I also understand that the Department effectively cooperates with state and local authorities in

prosecuting bias motivated crimes, typically by allowing them to prosecute such crimes first because later federal prosecution is not precluded if it becomes necessary. This cooperative model of vigorous law enforcement has worked well in the context of backlash crimes. Indeed, I am informed that the Civil Rights Division and the FBI have investigated over 650 such incidents, worked cooperatively with state and local prosecutors in bringing approximately 150 cases, and brought federal charges in 22 cases against 27 defendants.

I have put these issues before the Department for the past 4 years. They've had ample time to consider them, but we've never received a definitive answer whether the Administration supports or opposes this legislation.

- 4. Flanagan, if confirmed to be Deputy Attorney General, will you support the expansion of the hate crime statute?**

ANSWER: I do not have access to the type of information that needs to be considered in making such a decision. If I am confirmed, I would be happy to review any such legislation.

V. Guns

1. District of Columbia Gun Ban

On June 26, 1976, the District of Columbia Council passed a ban on handguns. As you likely know, the House has recently adopted an amendment to the DC appropriations bill that would roll back this ban and impose restrictions on the DC government's ability to limit loaded firearms in the District. Similar proposals to repeal the DC gun ban have been introduced in the Senate.

Representative Eleanor Holmes Norton, Mayor Anthony Williams and Police Chief Charles Ramsey all oppose this funding limitation in the House appropriations bill. In addition, all oppose efforts to oppose DC's ban on handguns given their ongoing efforts to limit firearms-related violence in the District.

- A. What is your position on the amendment passed by the House? Do you support the language in the amendment to limit the DC Council's authority so that gun ban restrictions do not apply to handguns?**
- B. If you support limiting DC authority, how do you resolve the serious federalism issues raised by your position? It is without question that the federal government could not and would not take such a position if a State or other municipality took the District's position. How can you justify overriding the District's popular will?**

ANSWER: I understand that the Administration has not taken a position on the amendment the House adopted. With respect to the second question, I do not believe any federalism issues are raised. Unlike the states or their municipal corporations that exist pursuant to state law, the District of Columbia is an entity of the federal government. The Constitution vests legislative authority over the District of Columbia in Congress, and the D.C. City Council is a creature of Congress, which is ultimately responsible for legislating for the District of Columbia. Therefore, questions of federalism do not enter into the discussion when Congress is considering legislating for the District of Columbia.

2. Law Enforcement Safety Act

During the last Session of Congress, both the House and the Senate passed the so-called "Law Enforcement Officers' Safety Act." This new law will exempt certain law enforcement officers from state concealed carry laws – despite concerns that this new law will undermine the safety of our communities and the safety of police officers. Without question, the intent of the legislation was to broadly override state and local gun-safety laws and, as a result, nullifies the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms.

When these bills were considered before Congress, they were strongly opposed by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Conference of Mayors.

- A. Please describe your position on this new law and explain how it should be implemented? What is your position on the effectiveness of state laws and whether they should be preempted by federal legislation?**

ANSWER: I understand that the Administration supported enactment of the Law Enforcement Officers' Safety Act, and I support the Administration's program. With respect to the Act's implementation, I understand that the Department of Justice issued implementation guidance for its law enforcement agencies on January 31, 2005, and published that guidance in the Federal Register.

With respect to the question of the effectiveness of state laws and the wisdom of preempting them by federal law, there are circumstances in which preemption is sensible and those in which deference to state laws is to be preferred. In the case of the Law Enforcement Officers' Safety Act, Congress made the determination that the preemption of state laws was appropriate. The fact that Congress determined that preemption was appropriate in this case does not predetermine its appropriateness in any other instance. Should questions of preemption come before me as a policy matter, I will approach them on a case-by-case basis in developing my position.

VI. Civil Rights

Several key provisions of the Voting Rights Act will expire in August 2007 unless they are reauthorized by Congress, including the pre-clearance requirements of section 5 and the requirements regarding bi-lingual election materials in section 203.

- 1. If you are confirmed, will you ensure that the Department assists Congress in conducting the thorough hearings needed to evaluate the reauthorization of the Voting Rights Act, including providing Congress with information and documents about the Department's enforcement of the Act?**

ANSWER: Attorney General Gonzales has stated clearly that this Administration looks forward to working with Congress on the reauthorization of the Voting Rights Act.