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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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January 31, 2008

The Honorable Michael B. Mukasey
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

One week from today, you will testify for the first time before the House Judiciary Committee. I very much look forward to a frank and productive discussion that will shed light on your approach to the challenging issues facing the Department of Justice (DOJ) and our nation at this time. In order to make the most of our limited time, I am sending the following questions about issues of interest to myself and other Committee members. We would appreciate receiving your responses, along with your prepared testimony, no later than the close of business on February 5, 2008, so that all Committee members may have an opportunity to review them before you testify next week. In addition, please provide responses to the previous Committee letters to which there has not yet been a response, including letters to the Department of May 8, November 9 and December 20, 2007 and January 10, January 15, January 23, and January 29, 2008.

1. **Politicization of the Department of Justice - Former Reagan Attorney General Richard Thornburgh** is just one of a number of former DOJ officials who have expressed concern about the politicization of the Department in recent years, including U.S. Attorneys' offices, as reflected in the forced resignation of U.S. Attorneys in 2006 and other events.
 - a. In addition to your revisions to DOJ policy concerning contacts between DOJ personnel and White House officials regarding pending matters, which I commend, describe any other steps you have taken to address this concern, whether with respect to the hiring of career personnel, restoring the traditionally apolitical approach to prosecution of the U.S. Attorney corps, communicating to the entire Department and the public that partisan politics must be checked at the door, or otherwise.

- b. The website TPMuckraker, which played an important role in providing information to the public concerning the U.S. Attorney scandal, revealed that it has recently been removed from DOJ's press release email distribution list. Who made this decision and why, and was there a change in policy in press release distribution after you became Attorney General?
2. **Waterboarding and Torture** – Your January 29, 2008, letter to the Chairman and members of the Senate Judiciary Committee, which preceded your Senate testimony on the same topic the following day, states that “There are some circumstances where current law would appear clearly to prohibit the use of waterboarding. Other circumstances would present a far closer question.”
 - a. What specific “current law” were you referring to that would prohibit waterboarding “in some circumstances”? What “circumstances” were you referring to?
 - b. Are there any circumstances in which you believe that the waterboarding of a captured American soldier would be lawful?
 - c. Yesterday, Senator Durbin asked if you had reviewed a 2005 legal opinion that the New York Times described as providing “explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures.”¹ This memorandum, authored along with others in this period by Steven Bradbury, was apparently approved by former Attorney General Gonzales over the objections of his Deputy Jim Comey, who stated that the Department would be “ashamed” if it became public. You indicated that you had not reviewed these memoranda but that you would do so. I urge you to complete that review and state whether you agree with the legal reasoning that they contain and would have approved the opinion.
3. **Selective Prosecution** – During your confirmation hearing before the Senate Judiciary Committee, you pledged in response to a question from Senator Schumer to look into the Siegelman prosecution in Alabama, which was the subject in part of a Joint Hearing of two House Judiciary Subcommittees. You also stated that you would review a recent study finding that, during the Bush

¹ Shane, Johnston, and Risen, *Secret U.S. Endorsement of Severe Interrogations*, New York Times, Oct. 4, 2007.

Administration, Democratic officeholders have been investigated by Department prosecutors six times more often than Republicans.

- a. Please describe what steps you have taken to familiarize yourself with the Siegelman matter, including the allegations of politicization that Senator Schumer referenced in his question to you? Did you review the record of our Subcommittees' Joint Hearing on October 23, 2007?
 - b. Have you taken any actions or formed any views about that matter and the allegations of political pressure referred to by Senator Schumer and discussed at our hearing?
 - c. Please describe what steps you have taken to familiarize yourself with the study regarding the relative frequency of investigations of Democrats and Republicans. Have you taken any actions or formed any views about that issue in response to your review of the study?
- 4. Investigation Into Destruction of CIA Tapes** – Justice Department regulations require you to appoint an outside special counsel when: 1) a “criminal investigation of a person or matter is warranted,” 2) the investigation “by a United States Attorney’s Office or litigating Division of the Department of Justice would present a conflict of interest for the Department,” and 3) “it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.” Although you have publicly stated that you do not intend to appoint a special prosecutor to investigate whether the CIA violated the law when it destroyed videotapes of terrorist suspect interrogations, please address the following questions.
- a. In light of the fact that the Department may have been consulted on matters and decisions which are central to the investigation, why do you believe that this matter poses no risk of a conflict of interest for the Department and that the appointment of a special counsel from outside the government would not be in the public interest?
 - b. What is the scope of AUSA Durham’s investigative authority and reporting requirements and have any limitations on the investigation’s scope, jurisdiction, subject matter and methods been placed on him? In particular, although you testified yesterday that he may investigate the issue of what was shown on the tapes as part of the motive for their destruction, does the scope of the investigation include the legality of the conduct shown on the tapes

and of the alleged failure to provide the tapes to the 9/11 Commission or to any federal court?

- c. What attorney and other resources will be dedicated to the investigation?
- d. What role and authority will the Deputy Attorney General have in this investigation?

5. Vote Suppression and Civil Rights Enforcement – In remarks you made at a Martin Luther King, Jr. Day Prayer Breakfast on January 9th, you said that vigorous, fair, and impartial enforcement of the civil rights laws is among your “top priorities” as Attorney General. You also stated that the Civil Rights Division will play a crucial role through monitors and other means in assuring that the laws are scrupulously observed as our nation chooses a new President.

- a. Despite complaints of voter suppression and intimidation, this Administration has brought fewer cases under Section 2 of the Voting Rights Act, and brought them at a significantly lower rate, than any other administration since 1982. What are your plans for ensuring that Section 2 is vigorously enforced and enforced in a fair and impartial manner?
- b.. What actions is the Department preparing to take to address complaints of caging, intimidation, and other campaign tactics intended to suppress the minority vote?
- c. As we approach the 2008 Presidential election and the 2010 Census, there will likely be an upsurge in submissions under Section 5 of the Voting Rights Act. What steps are being taken to prepare for and respond to an increase in Section 5 submissions?

Please send your responses to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, D.C. 20515 (tel.: 202-225-3951; fax: 202-225-7680). Thank you for your prompt attention to this matter, and we look forward to hearing from you next week.

Sincerely,



John Conyers, Jr.
Chairman