Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015

QUESTIONS FROM SENATOR TILLIS

1. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked a number of questions that related to transparency at the Department of Justice. As you know, the Inspector General serves as an independent checking power to deter fraud and promote efficiency within the Department of Justice and other agencies. Under the Inspector General Act, the Inspector General has the authority, "to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." 5 U.S.C. App. § 6 (a)(1). This information includes Title III wiretap information, grand jury documents, and consumer credit information under the Fair Credit Reporting Act. In some situations, the Attorney General may prohibit investigations, audits, or issuance of subpoenas if the Attorney General provides written notice to the Inspector General explaining the reason such action complies with 5 U.S.C. App. § 8E (1), (2), and (3).

   According to testimony from Inspector General Michael Horowitz in 2013, the Department of Justice obstructed his authority to access non-privileged documents. Instead, the practice of Attorney General Holder required the Inspector General to receive written permission before the Inspector General obtained access to non-privileged records. In my view, this practice violates the plain reading of the statute and requires the Inspector General to give deference to its auditing agency, which clearly defeats the statutory purpose and independence vested in the Inspector General.

   If confirmed as Attorney General, would you continue the same practices as your predecessor?

RESPONSE: I believe strongly in the independence of the Inspector General, and share his goal of ensuring a well-functioning Department of Justice. I understand that the Office of Legal Counsel is currently working on an opinion that would address the interaction of the Inspector General Act and other statutes that specifically limit the dissemination of certain information. Regardless of the outcome of this review, if confirmed, I will commit to providing the Inspector General with the documents necessary for him to complete his reviews.

   a. If yes, specifically explain your statutory interpretation that gives the Attorney General the ability to violate the plain meaning of the statute.

      i. Furthermore, specifically explain where you find statutory authority to require the Inspector General to comply with the current administration's practice of requiring written permission to access non-privileged documents?

ii. Specifically explain what power the Inspector General holds to effectively audit, recommend efficiency proposals, and eliminate waste if the Attorney General can unilaterally withhold access information that is not privileged?

iii. If the Attorney General can unilaterally withhold information from the Inspector General without statutory justification, what prevents other federal agencies from obstructing investigations and interfering with the independent powers given to the Inspector General?

b. If no, please specifically explain what steps you will take ensure the independence of the Inspector General's ability to audit the Department of Justice?

RESPONSE: I agree that an independent Inspector General is vital to ensuring a well-functioning Department of Justice. If confirmed, I am confident that the Inspector General and I will form a good working relationship, as we share the same goals.

2. In written questions submitted by this office previously, you responded that some of those questions related to pending litigation and that you therefore could not respond. Please explain why you were able to comment on pending litigation before a January 2014 audience in Long Beach, New York, but you are unable to do so when testifying before Congress.

RESPONSE: In my January 2014 speech, I commented on the Department's obligation to protect the constitutional right to vote and stated generally that the Department had brought suit in North Carolina. The questions that you previously asked, and which it would not be appropriate for me to answer, were those seeking responses on live issues in or details from the pending litigation.

3. In a December 2014 Report entitled "Professional Misconduct: DOJ Could Strengthen Procedures For Disciplining Its Attorneys," the Government Accountability Office concluded: "The Department of Justice (DOJ) has made changes to improve its processes for managing complaints of attorney professional misconduct since 2011 but has not implemented plans to improve processes for demonstrating that discipline is implemented, or achieving timely and consistent discipline decisions."

   In light of the GAO's conclusion, one of my previous questions to you was whether an attorney disciplined by a state bar, or one found to have committed prosecutorial misconduct, should be allowed to serve as an attorney at the United States Department of Justice. Your response indicated that you would be committed to pursuing appropriate discipline for individuals who do not carry out their duties with integrity and professionalism. Surely we can agree that attorneys who have committed prosecutorial misconduct or who have been disciplined by a state bar have not always carried out their duties with integrity and professionalism. Do you, in fact, agree with that statement? Secondly, would you, consistent with any due process rights of such an employee, dismiss an employee who does not uphold the "highest standards" about which you spoke in your previous response?

RESPONSE: As I stated previously, I will pursue appropriate discipline for Department employees who do not carry out their duties with integrity and professionalism. Without knowing the facts and circumstances of a particular case, I am not in a position to respond categorically to whether "an employee who does not uphold the 'highest standards'" will be dismissed; for instance, I understand that under applicable civil service laws and regulations, the Department must consider a number of factors concerning the employee and the findings of misconduct in determining what appropriate discipline to impose.

4. In December of 2012, you represented the Department of Justice in civil settlements with HSBC in your capacity as U.S. Attorney. You stated that the bank "routinely did business with entities on the U.S. sanctions list," and the bank helped dangerous drug cartels move large amounts of money. In addition to your own statements, there are reports that American citizens' personal information, such as names and social security numbers, were used to perpetuate fraud or were otherwise exposed.

    a. Did you have knowledge that HBSC was using or had used American citizens' personal information to perpetuate fraud when you settled the United States' suit against HSBC?

RESPONSE: No, I was not aware of these allegations when my office entered into the 2012 Deferred Prosecution Agreement (DPA) with HSBC.

    b. Without revealing privileged information regarding the settlement reached in the HSBC matter, please describe what metric, standards, or guiding principles you would use to determine an appropriate settlement amount for similar cases going forward?

RESPONSE: In any criminal investigation regarding allegations of wrongdoing by financial institutions or other large corporations, an analysis of appropriate penalties, both financial and otherwise, should be predicated upon a thorough review of the scope and severity of the wrongdoing, the reliability of the available evidence, the viability of prosecutions of individual perpetrators, and the other factors identified in the Department's Principles of Federal Prosecution of Business Organizations.

    c. Please explain the Department's rationale for not pursuing criminal prosecution in the HSBC matter.

RESPONSE: In the HSBC case, the penalties and remedial measures encompassed in the DPA were appropriate to address the compliance failures and sanctions violations enumerated in the Statement of Facts. As the United States District Judge overseeing the case observed in his opinion approving the DPA, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for it accomplishes a great deal."

For example, the anti-money laundering provisions of the Bank Secrecy Act apply only to domestic U.S. financial institutions. The DPA requires HSBC to engage in anti-money laundering and compliance efforts beyond the requirements of the Bank Secrecy Act, and it requires such efforts worldwide, and that HSBC follow the highest or most effective anti-money laundering standards available in any location in which it operates. That means, at a minimum, all of HSBC worldwide must adhere to U.S. anti-money laundering standards. We could not have accomplished this by obtaining a conviction at trial. This provision of the DPA represents a significant benchmark for future anti-money laundering compliance and enforcement.

In addition, the other terms of the DPA are perhaps the most stringent ever imposed on a financial institution. The DPA has a five-year term, which is among the longest that has ever been imposed on a financial institution for anti-money laundering or sanctions violations. This term reflects the seriousness of HSBC's conduct and allows for an extended period during which the government will closely monitor HSBC. HSBC is also required to retain and pay for an independent monitor to ensure that remedial measures are implemented. The DPA also ensures that HSBC will continue to cooperate with the government in any criminal investigation for the term of the agreement. Additionally, HSBC was required to forfeit $1.256 billion, which was the largest ever forfeiture in a bank prosecution to that point.

d. If confirmed, will you commit to imposing harsher penalties against entities that willfully ignore interests of national security and use American citizens' personal information to perpetuate fraud?

RESPONSE: If confirmed as Attorney General, I will ensure that the prosecution of perpetrators of identify theft is a significant priority of the Department and that all appropriate penalties are pursued, particularly where interests of national security are implicated.