

Nomination of Jeff Sessions to be Attorney General of the United States
Questions for the Record
Submitted January 29, 2017

QUESTIONS FROM SENATOR COONS

RESPONSE: The questions for the record received on January 17, 2017, were identical to the below questions, which were received on January 29, 2017. My answers, which are reproduced below for convenience, remain the same.

1. Evidence shows that solitary confinement has significant mental health consequences when used for extended periods of time.

- a. Do you believe solitary confinement should only be used as a last resort?

RESPONSE: It is vital that our prisons be able to secure prisoners and maintain order, but it is also important that they be a safe environment for those prisoners while they are incarcerated, as well as for those guarding them. I believe that we should closely evaluate the studies and evidence and make the best determination about how to handle what can be a dangerous prison population in a way that is both constitutional and effective.

- b. Do you believe solitary confinement should ever be used for juveniles?

RESPONSE: It is vital that our prisons be able to secure prisoners and maintain order, but it is also important that they be a safe environment for those prisoners while they are incarcerated, as well as for those guarding them. The need to maintain safety is especially true for juveniles, who often present unique correctional challenges. I believe that we should closely evaluate the studies and evidence and make the best determination about how to handle what can be a dangerous prison population in a way that is both constitutional and effective.

2. Individuals are being jailed throughout the country when they are unable to pay a variety of court fines and fees. There is often little or no attempt to learn whether these individuals can afford to pay the imposed fines and fees or to work out alternatives to incarceration.

- a. Under your leadership, will the Department of Justice work to end this practice?

RESPONSE: These are legitimate concerns, and if I am fortunate enough to be confirmed as Attorney General, I will make every effort to protect the constitutional rights of individuals in the federal criminal justice system.

- b. What is your position on the practice of imposing unaffordable money bail, which results in the pretrial incarceration of the poor who cannot afford to pay?

RESPONSE: There have been a number of concerns expressed by different groups, stakeholders, and officials regarding the use of money bail, and there is also ongoing litigation in various jurisdictions around the country regarding this practice. I believe that we should

closely evaluate these concerns and the evidence to determine areas where pretrial incarceration practices can be improved, while also securing suspected criminals or providing adequate assurances that they will be present for court proceedings.

3. The Department of Justice established the Office for Access to Justice (ATJ) in March 2010 to address the access-to-justice crisis in the criminal and civil justice system. ATJ's all, irrespective of wealth and status. How will you improve access to justice for indigent criminal and civil defendants?

RESPONSE: Ensuring that individuals are aware of and able to exercise their rights is an important part of a fair justice system. If I am fortunate enough to be confirmed as Attorney General, I will work to ensure that the constitutional rights of defendants are protected.

4. In August of 2013, the Department of Justice released the Cole memorandum, providing that states could pursue their own marijuana policy as long as the policy does not violate certain federal priorities, such as selling to minors or transporting marijuana across state lines.

- a. Will you continue to follow the Cole memorandum?

RESPONSE: While I am generally familiar with the Cole memorandum, I am not privy to any internal Department of Justice data regarding the effectiveness and value of the policies contained within that memorandum. If I am fortunate enough to be confirmed as Attorney General, I will certainly review and evaluate those policies, including the original justifications for the memorandum, as well as any relevant data and how circumstances may have changed or how they may change in the future.

- b. Will you instruct Department of Justice prosecutors to bring actions against those who use state-sanctioned medical marijuana, provided they are using it in accordance with the guidance of the Cole memorandum?

RESPONSE: While I am generally familiar with the Cole memorandum, I am not privy to any internal Department of Justice data regarding the effectiveness and value of the policies contained within that memorandum. If I am fortunate enough to be confirmed as Attorney General, I will certainly review and evaluate those policies, including the original justifications for the memorandum, as well as any relevant data and how circumstances may have changed or how they may change in the future.

5. How will you implement and enforce the Death In Custody Reporting Act and the FBI National Use of Force database?

RESPONSE: It is my understanding that in December 2016, the Department of Justice issued a report on the progress of implementing the Death in Custody Reporting Act (DCRA), which requires federal, state, and local law enforcement agencies to report information regarding

deaths of detainees, arrestees, or prisoners while they are in the custody of those agencies. The report indicated that guidelines for reporting that data will not be finalized before the second quarter of Fiscal Year 2017. It is also my understanding that the FBI is collaborating with major law enforcement organizations to develop a national use-of-force data collection effort, whereby law enforcement agencies may voluntarily collect and report data regarding the non-lethal use of force by their officers. If I am fortunate enough to be confirmed as Attorney General, I will support these efforts.

6. When you were the Alabama Attorney General, Alabama was the only state that handcuffed prisoners to “hitching posts” as punishment, cuffing them by both wrists to a pole at chest level with feet shackled for up to 10 hours at a time, unprotected from the sun, heat, or rain, and without access to water or even access to a bathroom. On March 27, 1995, the Department of Justice sent letters to you, as Alabama’s Attorney General, along with the Governor and other state officials declaring Alabama’s use of the hitching post unconstitutional and unjustified. However, the use of the hitching post continued. On June 27, 1995, the Justice Department sent a letter to the Alabama Department of Corrections stating, “We remain deeply concerned about your unwillingness to take any corrective action regarding the ‘rail’ or ‘hitching post.’ . . . [W]e have concluded that the use of the ‘rail’ is without penological justification.” The Alabama Department of Corrections was sued over the use of the hitching post in 1995 but continued to defend its use. At the hearing and in our private meeting, I asked you about the use of the hitching post in Alabama prisons when you were the Alabama Attorney General. However, you indicated in our meeting that you did not remember the issue, and your response at the hearing only addressed the use of chain gangs. Do you believe that the use of hitching posts is acceptable?

RESPONSE: In a series of cases decided years after I was no longer the Attorney General for the State of Alabama, the Supreme Court held that the use of hitching posts for punitive reasons unrelated to safety issues or emergencies is prohibited under the Eighth Amendment. If I am fortunate enough to be confirmed as Attorney General, I will enforce federal law as interpreted by the Supreme Court.

7. In *Hope v. Pelzer*, 536 U.S. 730, 744 (2002), the Supreme Court ruled that prison officials “violated clearly established law” when they continued to use the hitching post. Why didn’t you intervene to stop this unconstitutional practice when you were Alabama Attorney General?

RESPONSE: To my knowledge, in that case, the Supreme Court prohibited the use of the hitching post as applied in that case, due to the circumstances that case presented. The complaint in that case was not filed until after I was elected to the Senate, and the first filing by Alabama in that case was not until nearly two months after I had left the Alabama Attorney General’s Office.

8. In 2014, the Department of Justice concluded its investigation of allegations of sexual abuse and sexual harassment at the Julia Tutwiler Prison for Women, finding that:

For nearly two decades, Tutwiler staff have harmed women in their care with

impunity by sexually abusing and sexually harassing them. Staff have raped, sodomized, fondled, and exposed themselves to prisoners. They have coerced prisoners to engage in oral sex. Staff engage in voyeurism, forcing women to disrobe and watching them while they use the shower and use the toilet. Staff sexually harass women, subjecting them to a daily barrage of sexually explicit verbal abuse.

Also, there are federal lawsuits pending against Alabama state prisons challenging unconstitutional conditions, including high rates of violence and inadequate medical and mental health treatment. On October 6, 2016, the Justice Department announced that it had opened a statewide investigation into Alabama's prisons for men, which "will focus on whether prisoners are adequately protected from use of excessive force and staff sexual abuse by correctional officers, and whether the prisons provide sanitary, secure and safe living conditions."

- a. Will you ensure that the Department of Justice continues all of these investigations into conditions in Alabama prisons?

RESPONSE: Safe and secure prison conditions are an essential part of our justice system. If I am fortunate enough to be confirmed as Attorney General, I will ensure that violations of federal law in prison facilities are investigated and remedied no matter the state, and that our justice system protects inmates and those guarding them.

- b. As a public official in Alabama, what have you done to ensure that Alabama prison facilities comply with the Constitution?

RESPONSE: It is vital that our prisons be able to secure prisoners and maintain order, but it is also important that they be a safe environment for prisoners and those who guard them. That is why, in 2003, Senator Kennedy and I introduced the Prison Rape Elimination Act, which has been critical in making prisons a safer and more humane environment. If I am fortunate enough to be confirmed as Attorney General, I will continue to look for solutions like this to the challenges faced by correctional facilities.

9. The President-elect has claimed that millions of people voted illegally in the presidential election.

- a. Do you agree, and if so, on what evidence do you rest your claim?

RESPONSE: As I testified before the Committee, I am not aware of the context or the basis for the President-elect's remarks and have conducted no research nor reviewed data on the issue.

- b. If not, do you contend that there were instances of voter fraud in the 2016 presidential election, and on what evidence do you base your claim?

RESPONSE: As I testified before the Committee, I believe that fraudulent activities regularly occur during election cycles. There is no reason to believe that this election is any exception. I would also note that the bipartisan Carter-Baker Commission report, "Building Confidence in

U.S. Elections: Report of the Commission on Federal Election Reform,” found that “there is no doubt” that voter fraud occurs, that “a good ID system could deter, detect, or eliminate several potential avenues of fraud – such as multiple voting or voting by individuals using the identities of others or those who are deceased – and thus it can enhance confidence,” and that “most advanced democracies have fraud-proof voting or national ID cards, and their democracies remain strong.”

- c. How do you plan on using the resources of the Department of Justice to investigate alleged instances of voter fraud in the 2016 presidential election?

RESPONSE: The Department of Justice has a number of important responsibilities in this area, including investigating and prosecuting election fraud that violates federal criminal statutes, as well as investigating and bringing suit to prevent violations of federal voting rights laws. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department’s jurisdiction, including the laws regarding voting, in a fair and even-handed manner. Any specific enforcement decisions or actions would depend upon the facts and circumstances of each case.

10. A 2014 study by Justin Levitt published in the *Washington Post* found that since 2000, there were only 31 credible allegations of voter impersonation, during a period in which there were 1 billion ballots cast. In light of this report, do you think it is justifiable for the Department of Justice to spend resources on combatting in-person voter fraud?

RESPONSE: Please see responses to 9(b) and (c).

11. Do you agree that certain photo ID laws can disenfranchise otherwise eligible voters and disproportionately and unreasonably burden African-American and Latino voters?

RESPONSE: As I testified at the hearing, government cannot create laws designed to improperly inhibit the right of any eligible citizens to vote. The voting rights of Americans are protected by federal law, including the Voting Rights Act. As the Supreme Court held in *Crawford v. Marion County Election Board* voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. The analysis of such laws are specific to the particular law, the jurisdiction, and a wide range of factors that Congress has identified as relevant in determining whether a particular voting practice comports with the Voting Rights Act. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department’s jurisdiction, and particularly the laws regarding voting, in a fair and even-handed manner.

12. The FBI reported that hate crimes targeting Muslims increased by 67% in 2015. How do you believe the Department of Justice should use its resources to address rapid, documented increases in crimes such as this one?

RESPONSE: I believe that Americans of all backgrounds and religious faiths are entitled to equal protection of the law. I share your commitment to protecting all Americans and, if I am fortunate enough to be confirmed as Attorney General, I will work with our law enforcement professionals to enforce laws and to tailor enforcement efforts as necessary.

13. Would you ever rely on *Korematsu v. United States*, 323 U.S. 214 (1944), as precedent?

RESPONSE: I would not positively cite *Korematsu v. United States* as precedent.

14. Do you believe internment of American citizens or residents is lawful?

RESPONSE: I am unaware of any proposal for internment of American citizens or residents. The *Korematsu* lesson our nation learned in WWII from the unjustified internment of Japanese citizens and residents must never be forgotten. This was a national tragedy that cannot be allowed to happen again. No person or groups of persons should be interned without a clear legal basis.

15. Last year, without debate or congressional action, Rule 41 of the Federal Rules of Criminal Procedure was amended to expand the government's ability to obtain a warrant and remotely access electronic devices. The rules now allow federal prosecutors to seek a warrant in any district "where activities related to a crime may have occurred." Will you instruct the Department of Justice to issue guidance on how this should be interpreted?

RESPONSE: It is my understanding that the new version of Federal Rule of Criminal Procedure 41 regarding venue took effect less than two months ago, after Congress chose not to take action to disapprove of the changes adopted by the Supreme Court. As this change is relatively new and I have not had a chance to study its impact, I do not yet know whether additional guidance is necessary.

16. Do you believe that religious institutions, including mosques, should be targeted for warrantless surveillance?

RESPONSE: I do not believe that a building or organization should be targeted for surveillance because it is a religious institution.

17. What will you do to ensure vigorous enforcement of the Ethics in Government Act, bribery and honest services laws, and anti-nepotism laws?

RESPONSE: If confirmed as Attorney General, I will ensure that the Department of Justice properly and professionally enforces all federal laws within its jurisdiction, including those involving government ethics, bribery, and anti-nepotism. I will ensure that Department personnel comply with the financial disclosure requirements of the Ethics in Government Act, *see* 5 U.S.C. § 101, and follow the rules of the Office of Government Ethics, *see id.*, § 402, 404, in a just and proper manner.

18. What is your interpretation of the effect of the Emoluments Clause on the ability of President-elect Trump or his family members to continue doing business with foreign governments after inauguration?

RESPONSE: The question posited is not one on which I have devoted any study, and would

depend on a number of facts and specific circumstances. Therefore, I am not in a position to offer even an informal opinion on it. If confirmed as Attorney General, I would provide legal advice on such matters only after examining the relevant facts and circumstances presented, and consulting with the Office of Legal Counsel and any other component of the Department having expertise bearing on such matters.

- a. Do you understand the arrangements announced at the President-elect's press conference on January 11, 2017 to be sufficient to comply with the Emoluments Clause?

RESPONSE: The question posited is not one on which I have devoted any study. Therefore, I am not in a position to offer even an informal opinion on it. However, President Trump has stated that he will comply with his obligations under the Foreign Emoluments Clause, and in fact, that he will take additional steps beyond what may be required under the Constitution.

- b. If your answer is "yes," what is the basis for your understanding that the President-elect is not receiving monetary or other benefits from foreign entities through his continued ownership interests in the Trump Organization, even if he does not have day-to-day control?

RESPONSE: See response to 18(a).

19. President-elect Trump, through the Trump Organization, has a contract with the U.S. Government that allows the Trump International Hotel Washington, D.C. to lease the Old Post Office property. This contract, however, contains a clause stating that "No . . . elected official of the Government of the United States . . . shall be admitted to any share or part of this lease, or to any benefit that may arise therefrom." If President-elect Trump does not divest his interests in this hotel prior to inauguration, the question of whether this contract has been breached will need to be decided. As Attorney General, your responsibilities would include enforcement of government contracts like this one.

- a. If President-elect Trump does not divest his interests in the Trump International Hotel Washington, D.C., will you enforce the contract?

RESPONSE: The question posited is not one on which I have devoted any study and would depend on a number of facts and specific circumstances with which I am not familiar. Therefore, I am not in a position to offer even an informal opinion on it.

- b. What steps do you commit to taking to prove to the public that the Justice Department's actions and your own will not be influenced in any way by the President-elect's monetary interests?

RESPONSE: If it is determined that the President has a conflict with the potential to influence, or to appear to influence, the impartiality of the Department of Justice, I will take whatever steps are necessary to ensure that the Department of Justice represents the interests

of the American people in the objective enforcement of the law. Any such decisions will depend on the specific facts and circumstances of the matter; therefore, it would be premature for me to announce how the Department might proceed.

20. The Office of Legal Counsel (OLC) supports the Attorney General in fulfilling his responsibility to provide legal advice to the President, heads of executive departments, and heads of military departments.
- a. Do you agree that, as discussed in the Best Practices for OLC Legal Advice and Written Opinions (May 16, 2005 and July 16, 2010), the Attorney General and OLC should provide “candid, independent, and principled advice—even when that advice may be inconsistent with the desires of policymakers” including the President?

RESPONSE: I believe that the Attorney General and the Office of Legal Counsel should always provide candid, independent, and principled advice.

- b. What standard do you believe must be met before an Attorney General or OLC opinion is overturned?

RESPONSE: As I testified before the Committee, the Office of Legal Counsel is a vitally important office which opines on important legal issues facing the Executive Branch. The OLC should render objective decisions, and thus should overturn a previous OLC opinion only after the most careful study and reflection.

21. The total volume of worldwide piracy in counterfeit products is estimated to be 2.5% of world trade (USD \$461 billion). Counterfeit products such as fake pharmaceutical drugs or faulty electronics can cause direct physical harm to Americans, and the profits from these illicit sales often go directly to the coffers of organized crime. How will you use Department of Justice resources to address this growing threat?

RESPONSE: Intellectual property crime is a serious problem that threatens the safety of American consumers, the success of American companies, and even our national security. If I am fortunate enough to be confirmed as Attorney General, I will ensure the Department of Justice investigates violations of federal law, and prosecutes whenever appropriate, to safeguard the American people and the American economy.

22. The Department of Justice has made substantial efforts to combat trade secret theft by foreign nationals. In 2009, only 45 percent of federal trade secret cases were against foreign companies; this number increased to over 83 percent by 2015.
- a. Will you prioritize enforcement actions to combat trade secret theft by foreign nationals?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will devote the resources of the Department of Justice to achieving the Department’s missions in many areas, and the priorities of each enforcement action will be an evolving decision based on the facts,

the needs at the time, and the resources available to the Department, so that we can best ensure justice for the American people and entities, including those affected by trade secret theft.

- b. How do you plan to continue the Department of Justice's efforts to successfully target criminal trade secret theft?

RESPONSE: The Department of Justice's efforts to combat trade secret theft involve coordination between multiple components that have jurisdiction and bring relevant expertise to these issues. If I am fortunate enough to be confirmed as Attorney General, I will ensure that the Department regularly reviews the allocation of resources and the results of these efforts to determine the right methods to improve the work to combat trade secret theft.

- 23. The United States' scientific and technological leadership is a prime reason for our economic advancement over many decades. Our innovation ecosystem is driven by the rewards of scientific innovation made possible by a vibrant capitalist economy. It relies on generous funding of scientific research and an educational system that is broad-based at the bottom and unparalleled in availability and quality at the top. It further relies on immigration, a commitment to sustained investment, and certainty provided by the rule of law. How will the Department of Justice, under your leadership, work to support components of the Executive Branch with missions focused on promoting scientific and technological progress, such as the National Institutes of Health, the National Institutes of Standards and Technology, the National Oceanic and Atmospheric Administration, and the United States Patent and Trademark Office?

RESPONSE: The U.S. Department of Justice defends these agencies, and others, before the courts. If I am fortunate enough to be confirmed as Attorney General, the Justice Department will properly and vigorously represent these agencies when they are sued, and ensure that their views on legal issues are taken into consideration in such matters.

- 24. Do you support the revocation or modification of the 14th Amendment's constitutional guarantee of birthright citizenship?

RESPONSE: I have not studied this issue in-depth. If I am confirmed, I will enforce the law and the Constitution, and recognize that Congress may determine whether to enact changes to the law.

- 25. You previously have expressed support for Arizona's SB 1070 and Alabama's HB 56, but both laws contained unconstitutional provisions.

- a. Would you have the Justice Department intervene if a state passes a law like Arizona's SB 1070 or Alabama's HB 56?
- b. Which portions of these laws do you understand to be constitutional, if any?

RESPONSE: The constitutionality of state laws is evaluated on a case-by-case basis before a determination is made by the Attorney General to intervene. Any specific decisions or actions would depend upon the facts and circumstances of each case and therefore I am unable to

answer the hypothetical. I would defer to the Supreme Court's reasoning as to which portions of these laws were found to be constitutional.

26. The Victims of Child Abuse Act (VOCAA) authorizes funds to directly support establishment and operation of local and regional Children's Advocacy Centers (CACs), as well as training and technical assistance related to improving the investigation and prosecution of child abuse and neglect. These centers are intended to coordinate a multidisciplinary response to child abuse (e.g., law enforcement, child protection/social services, medical services, mental health) in a manner that ensures child abuse victims receive the support services they need and do not experience the investigation of child abuse as an added trauma. Close to 312,000 children were served at CACs in 2015. Will you include full funding for the Victims of Child Abuse Act in the Department of Justice's proposed budget?

RESPONSE: The aims of VOCAA are noble and critically important. I am grateful to have had the opportunity to work with you on this important legislation. I have been a long and vigorous supporter of CACs and served on the board of one in Mobile, Alabama. These centers have produced a positive sea change in the way children's cases have been handled. If I am fortunate enough to be confirmed as Attorney General, I will endeavor to utilize the resources of the Department in the most effective manner possible to ensure the enforcement of federal law and, in particular, protections for children in danger of abuse and neglect.

27. When the Justice Department decided not to defend the Defense of Marriage Act (DOMA), the Department "notif[ied] the courts of [the Department's] interest in providing Congress a full and fair opportunity to participate in the litigation in [the DOMA] cases." If the Department of Justice decides it cannot defend a law, will you take whatever steps are necessary to ensure that Congress or others can continue to defend the law?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will ensure that the Justice Department notifies the other branches of the government, as appropriate, on the rare occasion that such a decision is reached.

28. The Department of Justice established the Violence Reduction Network in 2014. VRN provides a comprehensive approach to reducing violent crime in communities around the country by deploying federal resources in a targeted, strategic, data-driven way to assist state and local law enforcement. Through its participation in the VRN, the Wilmington Police Department created a new homicide unit, and the homicide clearance rate rose from less than 10 percent to more than 50 percent on current-year cases.

- a. How will you support the sustainability of the Violence Reduction Network improvements in cities that have participated in the program?
- b. Will you expand the VRN to work with additional cities?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will endeavor to utilize the resources of the Department in the most effective manner possible to ensure the enforcement of federal law. While I am not familiar with the details of the Violence Reduction

Network, I will carefully evaluate any current departmental practices and the effectiveness of those practices to aid in the administration of justice. The positive results cited above are remarkable and could justify replication.

29. Studies show that 5 percent of gun dealers sell 90 percent of guns that are subsequently used in criminal activity. How will you direct the Department of Justice to instruct the Bureau of Alcohol, Tobacco, Firearms and Explosives to crack down on dealers that funnel thousands of crime guns to city streets?

RESPONSE: When I served as a United States Attorney, protecting the public from violent gun-related crime was among my top priorities. As I testified before the Committee, I will enforce federal background check laws. Properly enforced, the federal gun laws can reduce crime in our cities and communities. Those who deliberately violate federal gun laws should be investigated and prosecuted. If I am fortunate enough to be confirmed as Attorney General, I will support the continued enforcement of federal gun laws, as appropriate, and focus on criminal offenders.

30. The Justice Department has supported the Youth Mentoring Program, which provides much needed funding to organizations like Boys & Girls Clubs of America. In my state of Delaware, those mentoring funds support programming to 44,100 young people between the ages of 5-18 years old. As Attorney General, will you ensure that the Youth Mentoring Program will be fully funded?

RESPONSE: While I am not familiar with the specifics of the funding associated with this particular program, if confirmed, I will make funding decisions only after a careful evaluation of any current practice or program administered by the Department and the effectiveness of those practices to aid in the administration of justice. I will endeavor to direct and utilize the resources of the Department in the most effective manner possible to ensure the enforcement of federal law. I will note that I have personally observed the work of the Boys and Girls Clubs and believe them to be important and cost-effective programs.

31. In May 2015, the President's Task Force on 21st Century Policing made a series of recommendations aimed at making communities safer, including developing lasting positive connections between law enforcement and the communities they serve and improving youth attitudes toward law enforcement. How will the Department of Justice promote and support partnerships between law enforcement and young people to promote stronger, safer communities?

RESPONSE: As I testified before the Committee, trust and partnerships between law enforcement and the communities they protect are essential to the ability of officers to keep those communities safe. If I am fortunate enough to be confirmed as Attorney General, working with and supporting State and local law enforcement in these efforts will be one of my top priorities.