**Senator Al Franken**
**Questions for the Record**
**Sally Quillian Yates**
**Nominee to be United States Deputy Attorney General**

1. **During our meeting last month I explained to you that I am very concerned about the proliferation of so-called "stalking apps" on mobile phones. These are apps that allow users to track the locations of victims, listen to their phone calls, or read their text messages. Stalking is illegal under state law, but federal law does not currently prohibit developers from creating apps that track geo-location data. I plan to reintroduce legislation on this topic, because I think we need to close that loophole.**

   **DOJ does have authority under existing wiretap laws to prosecute creators of apps that allow stalkers to listen to victims' phone calls, intercept text messages, or otherwise intercept content from victims' phones. And I'm pleased that DOJ prosecuted one app developer who created an app to do all those things. I had asked that you do just that.**

   **But looking ahead, first of all: will you work with me on my bill to make sure that the federal government has all the tools it needs to go after stalking apps and other location privacy problems? And second: I believe there is more DOJ could be doing now—specifically, DOJ could include more robust questions in the National Crime Victimization Survey regarding GPS stalking. Will you do that?**

**RESPONSE**: As Acting Deputy Attorney General, and as a career prosecutor, I share your concern about these "stalking apps" and I thank you for your attention to this issue. The Department is committed to cracking down on those who seek to profit from stalking-type applications by using them to commit individual privacy invasions. As you reference, an individual in the Eastern District of Virginia was recently prosecuted and pleaded guilty to advertising and selling a spyware application. In addition, the Administration's January 2015 legislative proposals to update cybercrime laws included provisions authorizing the forfeiture of proceeds from the sale of spyware, and adding the sale of spyware as a predicate offense under the money laundering statutes, both of which would increase our ability to go after those who propagate spyware such as stalking apps.

In addition to our criminal enforcement efforts, the Department also has available a range of resources for state and local authorities to address issues of cyberstalking. The Department's Office of Justice Programs and Office on Violence Against Women are providing grants, training, and technical assistance on this issue. We also have victim assistance funds available for victims of cybercrime. In addition, the Department's Bureau of Justice Statistics will be revising and expanding the National Crime Victimization Survey for 2016 to address cyberstalking and related issues, and we would welcome the opportunity to discuss this issue further with you and your staff.

2. **I want to ask you about efforts to rein in abuses in the credit rating industry—this is a topic you and I discussed when we met earlier and it is something that I have been focused on since I came into office, because those abuses played an important role in helping to cause the financial meltdown and the Great Recession. The current business model for credit rating agencies is deeply flawed. It's a system that allows banks to shop around among agencies to get a good initial rating on a financial product, and encourages the ratings agencies to loosen their standards to chase the business of big banks. The result is a "pay-to-play" system that encourages risky, inflated ratings at the expense of public investors. I've been working with a bipartisan group of colleagues, pushing for common-sense reforms to fix the system.**

   **I know that DOJ has been looking back at what happened in the financial crisis and working to hold the credit rating agencies accountable for the inflated ratings that contributed to the crisis. But so far, DOJ has filed suit against just one credit rating agency, S&P—a suit that S&P settled for nearly $1.4 billion. But when that suit commenced, the Department suggested that more suits might be forthcoming. I am deeply concerned that these risky practices remain business-as-usual for the big ratings agencies and that a simple slap on the wrist won't be enough to change the misaligned incentives of their flawed business model.**

   **Will you take an aggressive approach to holding the ratings agencies—including but not limited to S&P—accountable for their role in the financial crisis? And will you commit to ensuring that DOJ will remain vigilant and hold rating agencies accountable for engaging in the kind of "pay-to-play" schemes that led to the crisis in the first place?**

**RESPONSE:** Thank you for raising this issue in our meeting last month. I assure you that I am committed to using all of the Department's enforcement tools, both civil and criminal, to target financial fraud and to continue to pursue and hold accountable those who contributed to the financial crisis. The Department has aggressively prosecuted a wide range of complex and sophisticated financial fraud cases, and a number of major investigations remain ongoing. The Department's recent enforcement efforts demonstrate its focus on misconduct of every kind that contributed to the financial crisis, including that of credit rating agencies. The February 2015 settlement with Standard & Poor's Financial Services (S&P) is one example of the Department's efforts, and it is the largest penalty of its type ever paid by a ratings agency.

Another significant aspect of this resolution is S&P's admission of its own unlawful role in the financial crisis. Specifically, S&P admitted that, while it had promised investors and the public that its ratings would be independent and objective and not affected by any existing or potential business relationship, its decisions on its rating models were, in fact, affected by business concerns, and that it was with an eye to business concerns that S&P maintained and continued to issue positive ratings on securities despite a growing awareness of quality problems with those securities. This resolution, along with others of the last two years, demonstrates the Department's commitment to protect the integrity of our financial system and the best interests of the American people. In my current role as Acting Deputy Attorney General, and if confirmed, I can assure you that the Department will continue to remain vigilant in its efforts to combat corporate fraud, and, above all, to ensure that the individuals who commit the fraud at those institutions are held to account.

3. **At the time of the founding of our nation, no one could conceive of the many technologies we have today. Even 20 years ago, we did not foresee the invention and prevalence of the smart phone—a device with which nearly everyone is now familiar.**

   **There is no question that new technologies—from drones to facial recognition software—have enormous potential in both commercial and law enforcement applications. But I am deeply troubled by the limited privacy protections current law grants. Our privacy laws just have not kept pace with technological innovation. We need to be thinking carefully about the privacy implications of these technologies, and we need to get clear, strong privacy laws on the books. How will you go about balancing privacy and law enforcement interests? Will you commit to carefully considering the privacy implications for any DOJ programs and working with me to update our laws?**

**RESPONSE:** I agree that it is important to balance privacy and law enforcement interests, and I am committed to carefully considering the privacy implications for any Department programs. As technology plays an increasingly important role in promoting public safety, the Department remains deeply committed to utilizing law enforcement resources in a manner that is consistent with the requirements and protections of the Constitution, and with high respect for the important privacy interests of the American people.

The Department's privacy compliance program has steadily evolved since the enactment of the Privacy Act of 1974. Privacy and civil liberties are key considerations taken into account in virtually all Department programs, and they play an important role in the decisions of the senior leadership of the Department. In February 2006, the Department created an Associate Deputy Attorney General position in the Office of the Deputy Attorney General to serve as the Department's Chief Privacy and Civil Liberties Officer (CPCLO), who reports to both the Deputy Attorney General and to the Attorney General. The CPCLO leads the Department's privacy and civil liberties program, and is supported by the Office of Privacy and Civil Liberties. In addition, the Department has designated a senior official within each component to serve as the Senior Component Official for Privacy to ensure privacy issues are reviewed at the component-level.

As demonstrated by the legal review and privacy assessments that have been conducted by our components and the development of privacy best practices and operational guidelines, the Department has always had a long-standing, firm commitment to preserving the privacy and civil liberties of the public that we serve. If confirmed, I will continue to uphold that commitment as Deputy Attorney General, and I will be happy to work with you on these important issues.

4. **DOJ's Antitrust Division is currently reviewing Comcast's proposed acquisition of Time Warner Cable. In March of last year, I sent a letter to the Antitrust Division, raising my concerns about the deal, which—if approved—would result in a company with unprecedented power in the telecommunications industry. It would threaten to seriously compromise the open, competitive nature of the Internet, while also raising**

**prices and restricting consumer choice. Strong antitrust enforcement by DOJ is essential to protecting consumers.**

**If confirmed, will you commit to reviewing the serious concerns about the proposed Comcast-Time Warner Cable deal that I and so many others have raised, and to doing all that you can to ensure that the Antitrust Division is empowered to stand up to telecommunications giants like Comcast?**

**RESPONSE:** I agree that vigorous enforcement of the antitrust laws by the Department is essential to protecting competition and consumers. Although I cannot comment on an active investigation, I can assure you that the Antitrust Division is conducting a comprehensive investigation of Comcast's proposed acquisition of Time Warner Cable. The Department appreciates your concerns and as part of its investigation will analyze the issues you have raised. The Department is also working closely with the FCC to ensure that competition is protected in the marketplace for video distribution, broadband, and content production.