Senator Thom Tillis
Questions for the Record
Sally Quillian Yates
Nominee to be United States Deputy Attorney General

1. **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 implemented by 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 Inspector General statute and requires the Inspector General to give deference to the very agency it is supposed to audit, which clearly defeats the statutory purpose and independence vested in the Inspector General by statute. To me, it seems like the Attorney General and Deputy Attorney General would welcome recommendations from the Inspector General to promote efficiency and eliminate fraud and waste to increase the Department's resources.

   As acting Deputy Attorney General, has this practice continued since your appointment?

RESPONSE: I believe that the Inspector General plays a particularly critical role at the Department of Justice in helping us to identify misconduct or malfeasance, or simply waste, fraud and abuse, and that the Inspector General should receive all documents that he needs to complete his reviews. I understand that OLC, in response to a request from former Deputy Attorney General James Cole, is preparing a legal opinion addressing the circumstances in which the Inspector General is legally authorized to gain access to information obtained pursuant to the Federal Wiretap Act, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. §§ 2510-2522 (2012); grand jury material protected by Rule 6(e) of the Federal Rules of Criminal Procedure; and information obtained pursuant to section 1681u of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (2012). I expect their work to be completed as soon as possible. Although it is my understanding that the Inspector General has never been denied access to Title III or Rule 6(e) material when necessary to complete his reviews, I am developing a department-wide policy that will expedite the production of such documents to the Inspector General, and I expect that policy to be finalized in the coming weeks.

a. If yes, specifically explain your statutory interpretation that gives the Attorney General the ability to violate the plain meaning of the IG's powers under 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 from the Attorney General in order for the IG 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 contrary to the IG statute, what prevents other components within the Department from obstructing investigations and interfering with the independent powers specifically given to the Inspector General?

b. If no, please specifically explain what steps you will take ensure the independence of the Inspector General's statutory authority and ability to audit the Department of Justice and how you will prioritize his recommendations.

RESPONSE (to a-b): As explained above, I believe that the Inspector General plays a critical role at the Department of Justice in helping us to identify misconduct and malfeasance as well as waste, fraud and abuse. To ensure the independence of the Inspector General, I am working hard to develop a new department-wide policy that will expedite the production of documents to the Inspector General, and I expect that policy to be finalized in the coming weeks.

c. In addition, this month, OIG issued a report entitled "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components." This report reviewed the Department of Justice's law enforcement components and their handling of internal sexual misconduct and sexual harassment allegations. The report specifically stated, "The OIG's ability to conduct this review was significantly impacted and delayed by the repeated difficulties we had in obtaining relevant information from both the FBI and DEA as we were initiating this review in mid-2013."

i. Do you believe the Department's law enforcement components have the authority to unilaterally withhold information from the Office of Inspector General? If yes, please explain your justification.

ii. **If no, please explain what steps you will take to ensure that the Department's law enforcement components do not continue to obstruct investigations by the Office of the Inspector General.**

RESPONSE (to c): As I explain above, I am working hard to develop a department-wide policy that will expedite the production of documents to the Inspector General, and I expect that policy to be finalized in the coming weeks.

2. **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."**

    a. **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?**

    b. **Secondly, would you, consistent with any due process rights of such an employee, dismiss an employee who does not uphold the professional standards and duties required of them as an attorney and a Department of Justice employee?**

    c. **Would you agree that any attorney at the Department of Justice who has actually been disbarred should be dismissed?**

    d. **What actions have you taken as acting Deputy Attorney General to comply with the recommendations offered by the Government Accountability Office in its report?**

RESPONSE (to a-d): I am committed to ensuring that all Department attorneys carry out their duties with the highest level of integrity and professionalism, and to pursuing appropriate discipline for those who do not. The Department takes into consideration all aspects of a candidate's suitability for employment when making hiring decisions, including whether the attorney has a history of professional misconduct. By their nature, professional misconduct findings are fact-based and varied, and the Department carefully considers the allegations and conclusions of any prior discipline or misconduct findings when evaluating an attorney's suitability for employment. I will follow the Department's suitability rules and policies as applied at the time of hiring, and will support measures that ensure Department attorneys carry out their duties using excellent judgment and consistently adhering to all applicable professional responsibilities. Public service is a public trust, and I believe it is important for the Department to maintain the highest standards for all of its employees.

It is my understanding that there has not been an instance where a person who has been disbarred has continued to serve as an attorney in the Department. Any time the Department takes disciplinary action against an employee for findings of misconduct, we are obligated to follow the due process and procedural statutory requirements for Adverse Actions set forth in 5 U.S.C. Chapter 75. By statute and Department policies, however, all Department attorneys are required to be active members of a state bar. If a Department attorney were disbarred and not an active member of a bar, then his or her employment with the Department would be terminated.

GAO made two recommendations to the Department in its report on professional misconduct. First, GAO recommended that the Department require components that impose discipline to demonstrate that they actually implemented the discipline. The Department adopted the recommendation, and this requirement is now part of the discipline process. Second, GAO recommended that the Department take steps towards expanding the jurisdiction of the Professional Misconduct Review Unit (PMRU) to all Department attorneys. The Department has done so, and all attorneys in the Department's litigating components are now subject to PMRU's jurisdiction.

3. **As of today, 34 states have passed laws requiring voters to show some form of identification at the polls. As of October 13, 2015, thirty one states have voter identification laws that are already in force. My home state of North Carolina enacted a Voter ID law in 2013, which doesn't even go into effect until 2016. As you are also likely aware, the Department of Justice filed a lawsuit challenging this reform. To date, both a Federal District Court Judge in North Carolina and the United States Supreme Court have refused to agree with the arguments advanced in the litigation by the Department of Justice. When Ms. Lynch was before the Committee, she continually stressed that the Department has limited resources and must "balance priorities with resources."**

    a. **Would you agree that the Department must set priorities and pursue the cases that the Department views as the most critical to the nation from a law enforcement perspective?**

    b. **Do you believe challenging the implementation of Voter Identification requirements that have been upheld by the Supreme Court in *Crawford v. Marion County Election Board,* 553 U.S. 181 (2008), that are widely popular with the American public, and now law in a majority of states, is an appropriate "balance of priorities with resources" for the Department of Justice?**

        i. **If yes, please explain why you believe this is an appropriate use of Department resources?**

            1. **Furthermore, it is my understanding that there are no fewer than 10 Department of Justice lawyers working on the North Carolina case alone. This does not include the numerous attorneys working on other similar cases in Wisconsin, Texas, and Ohio. Do you feel this is an appropriate expense and use of the Department's time, money, and attorneys given the concerns expressed by Attorney General nominee Loretta**

Lynch about "resource constraints" within the Department, and should these Voter ID cases receive priority over prosecuting cybercrimes, terrorism threats, and human trafficking?

ii. **If no, please explain what criteria you would use to decide which cases should receive priority consistent with the Department's and the AG nominee's claims of "resource constraints?"**

RESPONSE: Because the right to vote is one of our most sacred rights, it is critical that all eligible citizens are able to register and to cast a ballot. For this reason, if confirmed as Deputy Attorney General, I will be committed to using every available tool to ensure that all eligible Americans can exercise the franchise.

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. In fact, I understand that before the *Shelby County* decision, the Department did preclear some voter ID laws under Section 5 of the Voting Rights Act, such as in Virginia and New Hampshire. The analysis of any specific law, however, is very specific to the details of the law, the particular jurisdiction, and a range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act.

When considering questions under Section 2 of the Voting Rights Act, the Department considers whether there is a racially discriminatory purpose behind the enactment of a specific voting practice in a particular jurisdiction and/or whether the specific voting practice leads to a racially discriminatory result in that particular jurisdiction. In evaluating questions of discriminatory purpose under Section 2, the Department considers the factors discussed by the Supreme Court in the *Arlington Heights* case. Further, in evaluating questions under Section 2, the Department considers the Senate factors that are described in the 1982 legislative history of Section 2, and further discussed in the case law. Among the factors considered in making the evaluation of possible discriminatory purpose and discriminatory results is the nature, scope and severity of impediments faced by citizens in a particular jurisdiction regarding a specific voting practice, and what protections or alternatives may be available for citizens for whom a voting practice results in barriers to full and equal participation in the political process. A number of these questions are at issue in pending litigation in which the Department is participating, and for this reason, I am unable to comment further.

4. **In 1976, Congress established the Public Safety Officers' Benefits (PSOB) program, which is administered by the Department of Justice and provides lump-sum payments to eligible public safety officers and their survivors after a line-of-duty death or permanent and total disability. The program also provides educational benefits to an eligible officer's spouse and children. In 2009, the Government Accountability Office found that families of fallen or injured officers were waiting as long as a year and a half for a determination on a claim to the Public Safety Officer's Benefits Program.**

Just this past week, Peter J. Kadzik, Assistant Attorney General, responded to a February 2015 inquiry from Senate Judiciary Chairman Grassley regarding this program. That communication indicates there are 36 pending PSOB death benefit claims pending at DOJ, a number of which have been pending for over four years.

a. **This is an area where we cannot make excuses. In your time as acting Deputy Attorney General, what have you done to streamline this process and to ensure that outstanding PSOB claims are handled efficiently and quickly?**

b. **Notably, Mr. Kadzik's March 27, 2015 letter refers to a willingness to implement recommendations to improve the program's operation from the Department's Inspector General and the Office of Justice Program's Office of Audit, Assessment, and Management. Please explain whether you believe the program should have to be audited by two different entities just to ensure it is run efficiently and effectively. Please also explain what actions you will take to hold the employees managing the program accountable and to ensure that claims are managed in a timely manner in the coming years.**

RESPONSE: The Public Safety Officer Benefit (PSOB) is a critically important program, and the Department takes seriously our responsibilities in administering PSOB. As we indicated in a February 26, 2015, letter to Chairman Grassley, the Office of Justice Programs has undertaken several recent steps to streamline and improve our process of reviewing PSOB claims. Following the 2009 GAO report, OJP implemented a number of changes to the PSOB program in light of GAO's recommendations. Improvements include: hiring additional PSOB personal to handle outreach to claimants; hiring additional attorneys to review claims; limiting non-critical paperwork required by applicants; clarifying the process to revolve disputed medical evidence; and increasing collaboration with stakeholders. While these changes have improved some aspects of the claim determination process, we recognize that additional changes are needed to decrease the overall time period for processing claims. Thus, in January 2015, OJP's Assistant Attorney General directed the Office of Audit, Assessment and Management (OAAM) to conduct an internal business process improvement review, and recommendations from this review are expected later this year. We are also aware that the Department's OIG is conducting an independent audit of the PSOB Program. We look forward to reviewing the recommendations from both OAAM and OIG in order to assist our continuing efforts to improve the PSOB Program.

5. **In your testimony before the Senate Judiciary Committee, you stated, "I'm a big believer that you need to have strategic objectives and that's down to each and every component and employee of the Department of Justice having a strategy and goals they're setting. So that's something we're working on now."**

   a. **Please describe what observations you have had concerning the biggest challenges the department has had thus far concerning where the Department of Justice needs to improve the allocation of its resources?**

RESPONSE: As Acting Deputy Attorney General, I greatly appreciate this Committee's efforts to ensure the Department has the tools and resources it needs to vigorously enforce federal law, and keep our nation and communities safe. In order to fulfill our duties, the Department continues to work to restore the loss of staffing it incurred due to Sequestration and related budget constraints. Our people are the Department's strongest asset and the key to preserving and promoting public safety, yet the Department lost over 4,500 staff, including six percent of its attorneys and over 700 law enforcement agents.

In terms of strategic objectives and priorities, I believe the Department should stay the course on its number one objective to protect Americans from terrorism and other threats to sational security. In addition, we need to aggressively address all aspects of cybercrime, including criminal and national security threats; continue the fiscal savings and public safety enhancements of the Smart on Crime Initiative; strengthen our relationships with, and training and capabilities of, our law enforcement partners; protect vulnerable populations; and ensure we maximize the benefits of our information technology budget.

b. **What plan do you have for systematically reassessing these goals for your remaining time at the Department?**

RESPONSE: The Department is currently reviewing and updating its Priority Goals for FY 2016 and 2017. I recently met with the senior leadership of the Justice Management Division to launch this work. We have already begun the process of assessing our strategic and priority goals, and most importantly, establishing performance metrics for each of our identified goal areas to ensure we are providing proper management and oversight to our work and achieving our objectives.

c. **What issues and initiatives do you plan on prioritizing, if confirmed, over the next two years, and how and why did you reach your decisions?**

RESPONSE: First, the Department should continue its efforts outlined in the current strategic plan, specifically to: prevent terrorism and promote national security consistent with the rule of law; prevent crime, protect the rights of the American people and enforce federal law; and ensure the fair, impartial efficient and transparent administration of justice at all levels of government, including Tribal entities.

These core responsibilities are critical to the country. Additionally, in my meetings with our component heads, and in my recent meeting with the senior leaders of our management division, I've identified other priorities within these broad goals. For example, because prison and detention costs are 30 percent of our budget, it is important that we provide more systemic re-entry programming in our prisons as a mean of helping reduce recidivism and ultimately reducing incarceration costs. I also intend to elevate our focus on preventing and prosecuting cybercrime, which is an area with substantial risks to our economy, businesses, and citizens. I am working to strengthen the relationships between law enforcement and the communities they serve by providing better training to law enforcement and improved community policing programs. Finally, I've asked our management leaders to work to address what I perceive to be unevenness in our Information Technology capabilities in the Department. We need to modernize our mission critical investigative and litigation tools to better support all aspects of delivering fair and impartial justice, including investigation, prosecution, discovery, and litigation operations. Finally, we need to continue hardening our networks and data centers so our infrastructure can provide and protect our mission-critical technology needs.

6. **This month, the Office of Inspector General (OIG) issued a report entitled "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components." This report reviewed the Department of Justice's law enforcement components and their handling of sexual misconduct and sexual harassment allegations. Specifically, there were several instances of questionable reporting of sexual harassment by supervisors in the Drug Enforcement Agency (DEA), Bureau of Alcohol, Tobacco, Firearms, and Explosive (ATF), Federal Bureau of Investigation (FBI), and the United States Marshalls Service (USMS). OIG found that these supervisors were not disciplined or reprimanded for their improper reporting.**

    a. **While I am pleased to know that the OIG did not find many instances of improper reporting, I am concerned that the various supervisors that did not properly report sexual harassment were not disciplined. Do you intend to follow OIG's recommendation, namely that the Deputy Attorney General, "should ensure that the Department's zero tolerance policy on sexual harassment is enforced in the law enforcement components and that the components' tables of offenses and penalties are complimentary and consistent with respect to sexual harassment?"**

        i. **In addition, what procedures will you put in place to reprimand supervisors who fail to effectively report potential instances of sexual harassment and misconduct?**

RESPONSE: The solicitation of prostitution by Department personnel is inconsistent with the standards of the Department of Justice. Such activity creates a heightened risk of compromising national security and classified information, invites extortion and blackmail, and jeopardizes the Department's ability to execute its mission. On April 10, 2015, the Attorney General issued a memorandum reiterating that Department employees are prohibited from soliciting or procuring commercial sex. This prohibition covers all Department personnel, including attorneys, law enforcement officers, contractors, and subcontractors, and applies at all times during an individual's employment, contract, or subcontract, including while on personal leave. This policy prohibits accepting commercial sex purchased on one's behalf, and applies regardless of whether the sexual activity is legal or tolerated in a particular jurisdiction, foreign or domestic. Department employees who violate these prohibitions will be subject to suspension or termination. Supervisors and managers are subject to discipline for failing to report alleged violations.

    b. **The report also found that law enforcement agents in the DEA, who held Top Secret clearances, engaged in "sex parties" while working overseas.**

i. **Do you intend to follow the OIG's recommendation regarding an explicit ban on the solicitation of prostitution, even in foreign jurisdictions where such conduct may be legal?**

RESPONSE: As I stated above, and consistent with the OIG's recommendation, the Attorney General has issued a memorandum reiterating that Department employees are prohibited from soliciting or procuring commercial sex. This prohibition covers all Department personnel, including attorneys, law enforcement officers, contractors, and subcontractors, and applies at all times during an individual's employment, contract, or subcontract, including while on personal leave. This policy prohibits accepting commercial sex purchased on one's behalf, and applies regardless of whether the sexual activity is legal or tolerated in a particular jurisdiction, foreign or domestic.

c. **Finally, the report found that law enforcement components failed to have appropriate technology to archive, monitor and detect sexually explicit images and text messages. This failure limited the OIG's ability to determine the actual quantity of explicit emails, images, and texts transmitted; thus, the Department's failure hindered the OIG's ability to effectively investigate sexual harassment and misconduct claims.**

i. **What steps do you plan to take to ensure that sexually explicit communications are monitored and stored in a way to make sexual harassment and sexual misconduct claims investigations as transparent as possible?**

RESPONSE: Consistent with the Department's response to the OIG report, over the next few months, senior members of my staff will work closely with leadership and IT personnel in the Department's law enforcement components to ensure the proper preservation of text messages and images for a reasonable period of time. The Department will also work with the components to ensure that this information is available for misconduct investigations.